SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 13(2)

EDWARD J. GARRITY, ET AL., APPELLANTS,

vs.

NEW JERSEY.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-327-63

Criminal Action on Appeal from Camden County Court.

Sat below: Anthony C. Mitchell, J. C. C. and a Jury.

STATE OF NEW JERSEY, Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Defendants-Appellants.

Appellants' Appendix

[fol. 1]

APPENDIX

INDICTMENT
No. 339-62

The Grand Jurors of the State of New Jersey, for the County of Camden upon their oaths, Present That James Holroyd, Eugene D. Elwell and Donald Murray, all being, then and there duly qualified police officers of the Borough of Barrington, County of Camden aforesaid, and said James Holroyd also being a Deputy Violations Clerk in the Municipal Court of said borough aforesaid and the said Eugene D. Elwell also being a Violations Clerk during the year 1959 and Deputy Violations Clerk in the year 1960 in said court, and the said Donald Murray also being Deputy Violations Clerk during the year 1959 and Violation Clerk during the year 1960 in said court, and all, in said capacities, having the authority to exercise certain functions enumerated in R.R. 8:10-10(a) among which was the right "to accept . . . payment of fines and costs in traffic offenses . . . , and within the jurisdiction of this court during the period beginning January 1, 1959

and up to and including June 29, 1961, did commit the crime of conspiracy in that, then and there, they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state in that they unlawfully, knowingly and corruptly did agree to dispose of certain traffic offense cases commonly designated as "operating offenses", such as "speeding", R.S. 39:4-98, by altering and falsifying the summons and complaint made by the arresting officer or officers, as the case might be, thereby changing the nature of the offense aforesaid to one commonly designated as a "standing offense" such as "borough parking in a prohibited area" in violation of lawful regulations provided by resolution or ordinance duly adopted by municipal authority exercised under the right conferred by R.S. 39:4-197, whereby by reason of said alteration or falsification, offenders would not be [fol. 2] prosecuted under the charge first made, but, instead, would be prosecuted under the substituted charge, the practice being commonly known as "downgrading"; and in furtherance of said conspiracy agreed to require traffic offenders, as aforesaid, to pay a minimum fine and cost according to the borough Municipal Court schedule R.R. 8:10-10(b), which in the case of speeding in said borough consisted of a minimum fine for speeding of $10.00 and $5.00 for costs, which said fine and costs according to R.R. 8:10-10(b) were to "be paid to, receipted by and accounted for by the Violations Clerk"; they, nevertheless, agreed to issue receipts out of the said Municipal Court in an amount commensurate with the customary charge for parking, that is, $5.00, in satisfaction of a conviction of a charge for local parking and were also to make in the local Municipal Court Traffic Dockets an entry indicating only a payment of $5.00, thereby, and by the operation of the conspiracy to divert the sum of $10.00 unlawfully.

Overt Acts

And that in execution of the aforesaid conspiracy and to effect the object thereof, the following overt acts were done:

1. On September 15, 1959, James Holroyd, being a police officer of the Borough of Barrington, County of Camden, aforesaid, did arrest and make a complaint against one Robert Wright, charging him with exceeding the speed limit allowed in the zone in which the offense was committed, contrary to R.S. 39:4-98, said complaint bearing number 4453 issued out of the Municipal Court of said Borough of Barrington; and

On or about October 14, 1959, one Robert Wright paid by check into the Violations Bureau of said Municipal Court of the borough aforesaid, the amount of $15.00, the amount required to be paid in such case as fine and costs [fol. 3] for said violation which check was endorsed by the aforesaid Eugene D. Elwell in the name of the Borough of Barrington and deposited to the credit of said borough, and although Eugene D. Elwell as Violations Clerk had deposited said check as aforesaid to the account of the Borough of Barrington, receipt numbered 5706 issued out of said Municipal Court to said Robert Wright, dated January 8, 1960 and made by Donald Murray, Violations Clerk, in which he acknowledged receiving $5.00 in satisfaction of a conviction of said Robert Wright on a charge of "parking" and the said Donald Murray likewise on January 8, 1960 entered in the Traffic Docket a record of a payment of $5.00 by said Robert Wright in satisfaction of a fine for "parking"; and

The complaint aforesaid has been altered by striking out the numerals indicating the speed which the offender is alleged to have been driving and also striking out the numerals indicating the miles allowed per hour in the zone in which the offense was committed and by inserting in said complaint the word, "parking", and also by making a check mark in the printed part of the complaint designated "prohibited area", thereby changing the offense from one of "speeding" to one of "parking in a prohibited area".

The defendants herein have failed to account to the Municipal Court of said Borough of Barrington, or the Borough itself for the sum of $10.00 as aforesaid, contrary to

the provisions of N.J.S. 2A:98-1 and 2A:98-2 against the peace of this State, the Government and dignity of the same.

A True Bill: (illegible), Foreman.

Norman Heine, County Prosecutor.

[fol. 4]

IN THE CAMDEN COUNTY COURT

TRANSCRIPT OF TESTIMONY—May 27, 1963

Camden, New Jersey

Before: Hon. Anthony C. Mitchell, J. C. C.

APPEARANCES:

James G. Aiken, Esq., Assistant Prosecutor, For the State of New Jersey.

Joseph T. Sherman, Esq., Attorney for Defendant, Elwell.

John Gerry, Esq., Attorney for Defendants, Holroyd and Murray.

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[fol. 19] BUD M. RIGG, being first duly sworn, testifies as follows:

Direct examination:

By Mr. Aiken:

Q. Now where do you live, Mr. Rigg?
A. Levittown, New Jersey.
Q. What is your occupation or profession?
A. I am an attorney.
Q. Now in 1961, Mr. Rigg, did you have any official or public office or public job?

A. Yes, I was Deputy Attorney General for the State of New Jersey.

Q. Now just tell us briefly what a Deputy Attorney General is, will you Mr. Rigg?

A. Well, a Deputy Attorney General essentially is an aid or an assistor, to the Attorney General with specific assignments under that department.

Q. And in connection with your job as an assistant or Deputy to the Attorney General, during 1961, what, if anything, did you do with the municipal court and police department of the Borough of Barrington?

A. On June the 30th, 1961, the Supreme Court issued an order directing the Attorney General to conduct an investigation in the Borough of Barrington pertaining to the [fol. 20] handling of traffic summonses of the municipal court as well as investigating any persons connected with that court. Pursuant to that order the Attorney General assigned that task to me.

Q. Now, as the Deputy Attorney General and as I understand by the Attorney General to investigate these matters relating to traffic tickets in the Borough of Barrington, what, if anything, did you receive from Mr. McGinnis, who has just testified.

A. Among other things, I received a number of summonses which had apparently been issued in the Borough of Barrington and were subject to the jurisdiction of that municipal court.

Q. Now, will you look at the ticket—

A. May I just say in addition to summonses were also duplicated copies, complaints, receipts and alike.

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[fol. 60]

COLLOQUY AND ARGUMENT RE ADMISSIBILITY OF STATEMENTS

Mr. Aiken: Your Honor, at this time I am prepared to [fol. 61] proceed with the statements.

The Court: May we have a side bar conference for a minute. The jury may remain in the box.

(Side bar conference held in chambers, not on the record.)

The Court: Now, ladies and gentlemen of the jury, at this stage of the proceedings, there is a matter which is purely legal in character, and has already been explained to you, wherever possible all legal matters are disposed of out of the presence of the jury, the reason being of course, that we do not want to confuse the jury at this point of the case with what the law is. At the end of the case, the Court will charge you as to the law. Whether you agree or disagree with that law, under the oath that you take as jurors, you are bound to accept the interpretation of the court as to what the law is. I know that this is going to be a little bit lengthy, and there is no sense of sending you back to the jury room. I would estimate that it would take the better part of perhaps an hour, which will run into the lunch period, so that as far as you are concerned, I am going to excuse you until two o'clock so at two o'clock, please come back to room 326. Spectators remain seated until the jury leaves. You may leave.

(Jury excused.)

(The following transpires out of the presence of the jury.)

The Court: Now, you have some statements.

Mr. Aiken: Yes, I have a copy of each statement.

The Court: Now, gentlemen, we will go into the examinations of the various statements. One, I believe, was taken in Barrington and the other one being taken here in the Camden County Prosecutor's office, one having been taken by Deputy Attorney General Bud Rigg and the other having been taken by the first assistant prosecutor, Sidney Kaplan. What the court will do, I think, is follow the same procedure as we did in the other case, we will now go over

[fol. 62] the statements of the various individuals who gave them. Counsel will have a perfect right to object to put upon the record anything in the nature of an objection or arguments or reason for the objection and then if it is not agreed between state and counsel, the court will of course rule upon the objection and of course if the counsel is satisfied with the ruling of the court, that likewise will be noted on the record and objection on behalf of each of the defendants through their attorneys. Subsequently, if the statements are admissable as evidential or portions of the statements because in some of them there are portions that are not admissible, Mr. Garifo, who is the official court stenographer, a certified court stenographer, will read the statements to the jury. In the event that there is an argument as to what is and what is not in the statements, the court's copy will govern. Now is there anything that is not understood as far as counsel is concerned as to that particular point. All right. I think maybe what we will do, because I will erase these various notations here that I have made because I felt for example there is a statement made by Mr. Elwell, of course, that already was read once in the other case so I think to save the possibility of confusion, I will erase the notations that have been made in here and put notations instead. I may not be able to get it one hundred per cent clean, but of course, it will show evidence of the erasure anyway and I think under those circumstances, Mr. Garifo should have no difficulty in reading them if they are permitted to be read. I am directing your attention then, gentlemen, to the statement taken in Barrington in the municipal building on Thursday, November the 2nd, 1961, in the presence of Bud M. Rigg as Deputy Attorney General, John Corbin, State Police of New Jersey, John S. Gerry, Esquire, from the Borough's police department and the matter is reported by Lawrence Garifo, [fol. 63] Certified Shorthand Reporter of 158 Market Street, Camden, New Jersey. The other statement is by Mr. Elwell and I am starting at page 3. "Eugene D. Elwell,

having been sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Elwell, as you know, I have been directed by a Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the municipal court of Barrington, together with the conduct of all persons connected with this court and specifically the police department. It is for this reason I have asked you here today so I could ask you certain questions pertaining to those investigations. I want to advise you that anything you say to me must be of course of your own free will and of course without any threats, coercion, or promises or reward. I advise you further that you do have as every citizen has under the law of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you and further with full knowledge of this, you make this disclosure pertaining to this investgation, you thereby waive this right of privilege in relation to any phase of this investigation which might involve you. However, this privilege is somewhat limited under our laws to the extent that a police officer who under oath, during investigation, fails to testify or answer a specific question, does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the questions which I intend to put to you? Answer, I do, sir."

Mr. Sherman: Now, Your Honor, at this time with the permission of the court, I would like to object to that part on page 4 where in the question put by Mr. Kaplan was that this privilege is somewhat limited.

The Court: No, I believe this is by Mr. Rigg.

Mr. Sherman: I'm sorry, Mr. Rigg, that this privilege is limited under our laws to the extent that a police officer [fol. 64] under oath during investigations fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed by proper proceedings. My objection is that it violates the constitutional

provision and in fact, it takes away the previous statement by the prosecutor by Mr. Rigg that he does not have to answer anything which might incriminate him. The force and effect by this question, it practically puts the person in a position where he answers something, it may incriminate him, when he has no choice about it.

The Court: Do you wish to render an additional objection?

Mr. Gerry: I do, Your Honor please, on behalf of the co-defendants, Holroyd and Murray, I would like to raise the same objection of the constitutionality of this statute was referred to by Mr. Rigg to which I feel quite clearly, the defendants of course, were under duress and not admissable into evidence as a voluntary statement. Of course I will reserve that objection with the right to object to any statements made by the defendant, Elwell so far as they apply to the other two defendants whom I represent.

The Court: All right, now the court feels that under the circumstances the ruling on the court on that matter is this, that of course, it is directed to public officials and of course, public officials make up a good sized portion of society's law. I understand public officials, it amounts to or categorizes those people who in any way are connected with or have certain duties, obligations and responsibilities to the public. For example, Judges, Policemen, various types state police, Federal Bureau of Investigation and anyone else and my own thinking in the matter is that many a person makes applications or takes the necessary examination for that position, they are deemed to be informed or to personally know and it is their obligation at [fol. 65] least in my opinion, to make themselves acquainted with the rules and regulations concerning the position itself. It is again my thought in this matter that where a person wants to be a police officer, directing the reasoning specifically to police officers, that when he takes the examination and accepts the job, he also accepts the limitations as set forth in this particular statute and waives

that part of his constitutional rights. He still, of course, has the right to make the choice as was explained to him in here. He could refuse to answer this question, it would be tentative if he did so, I agree, but by the same token, that is one of the limitations that he willingly accepted and when he took the position, he did so from the very beginning. I will go one step further and will express myself as being of the opinion that it was indeed Mr. Rigg's obligation to explain to him the statute, because having not done so, it may very well have been that it would not have been a full and satisfactory explanation of his rights and that he could very well come into court and say that because it had not been explained to him, it was not a full and fair statement by interrogating officer before he did make the statement itself. The objection however, on the part of both of the attorneys, is denied. The reasoning on the part of the court concerning the motion made may be entered upon the record on behalf of all the defendants.

Mr. Sherman: Now, Your Honor, my further objection is based upon the fact that the testimony taken of Mr. Elwell and questions and answers directed to Mr. Elwell, in the capacity of one, as a police officer, and one as a violations clerk, and assuming the rule to be as Your Honor now stated it, that he felt it should be admitted as far as a police officer is concerned, I maintain that insofar as the violations clerk is concerned, there is no such ruling and therefore any testimony which he gave Mr. Elwell as a violations clerk based upon this theory of what is told to [fol. 66] him in reference to police officer, should not be admitted and should not be read and it would be improper.

The Court: Overrule the objection. I think as far as he is concerned, as status as violations clerk, he is likewise a public officer. He is carrying out duties that have to do with the administration of the court and therefore a public officer and he does fall of course, within the same provisions of the statute as an official. The motion is denied, reason of the court's conclusion on the same is entered upon

the record and objection on behalf of the defendant Mr. Elwell.

Mr. Gerry: Your Honor, please, on behalf of the defendants, Holroyd and Murray, I also object to the admission of the statements taken by Mr. Rigg of the defendant Elwell on the grounds that the statements were taken subsequent to it.

The Court: You need not argue that point. I will rule in your favor because as a practical matter this was subsequent to the final outcome of the alleged conspiracy itself, that as far as any statements by Mr. Elwell are concerned, they only bind Mr. Elwell and not bind Mr. Holroyd or Mr. Murray. Objection on that point is well taken.

Mr. Gerry: And they cannot sir, be used to establish the conspiracy itself.

The Court: Well, if they don't bind them, I don't see very well how they could so that objection or that explanation concerning the feeling of the court is the same in the other cases, it only binds the one that took it because by this time the conspiracy was all over, finished, and done with and as I understand the law after the person's completed, it is only binding upon the person making the statement. I will likewise instruct the jury to that effect and if these things are that the statements of the individual defendants are only binding upon the individual defendant, as far as the reading from these records is concerned. All [fol. 67] right, anything further gentlemen? I will continue to read.

"Question, You are a police officer in the Borough of Barrington? Answer, Yes sir. Question, How long? Answer, Nine and a half years. Question, Do you have any rating other than patrolman? Answer, No sir. Question, Have you during the nine and a half years specifically during the years '58, '59, and '60 and '61 ever acted as violations clerk of the municipal court, officer? Answer, Yes sir."

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[fol. 137] The Court: All right, reading from page 103 of the statement. "Donald Murray, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Murray, as you know, I am working a [fol. 138] Supreme Court order issued on the 30th day of June, 1961, directing me to investigate certain irregularities in the handling of municipal traffic matters in the court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today, and ask you questions. Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat or promise of reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right in relation to any matters pertaining to this investigation, there is one limitation of your privilege to the event that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from your office if you refuse to answer any questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you? Answer, Yes. Question, How long have you been an officer of the Borough of Barrington? Answer, Since 1957, May. Question, Have you ever served as court clerk or violations clerk? Answer, Yes.

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[fol. 148] Mr. Aiken: There is no specific reference to the other two defendants in the matter that follows in Mr. Murray's statement, so we go over to Mr. Holroyd's statement on page 181.

The Court: Continuing, "Lieutenant James H. Holroyd, having been duly sworn, was examined and testified as

follows: By Mr. Rigg: Question, Lieutenant, under a Supreme Court order dated the 30th of June, 1961, I have [fol. 149] been directed to investigate irregularities in the handling of municipal court vehicle matters in the Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you. Answer, Yes. Question, I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to refuse to disclose any matters which might tend to incriminate you, however if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future. Under our laws, as a police officer, you are subject to a statute which provides however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. Answer, Yes. Question, Knowing all this, you are willing to proceed? Answer, Yes. Question, How long have you been in the department? Answer, Ten years. Question, How long have you been a lieutenant? Answer, Since '58, December of '58. Question, You are undoubtedly familiar with the problems here, the practice of altering motor vehicle summonses and complaints? Answer, Yes I am.

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[fol. 154] Mr. Sherman: I have a few objections on that, shall I raise the objections now or wait.

The Court: Well, I can't pass on them until I see what is in it, so you better hold your fire until I start to read and then if at any time you want me to stop—

Mr. Sherman: Well, Your Honor, one of my objections should come before you start to read because it is based on the jurisdiction of the Prosecutor's office, so I may make my objection at this time.

The Court: All right, you may.

Mr. Sherman: Your Honor, as I understand the testimony of Mr. Rigg himself, there is a Supreme Court order directing him as a Deputy Attorney General to make an investigation of the Barrington, of the municipal court, now we have nothing on record to indicate under what authority the Prosecutor's office came into this picture. This was solely investigated by Mr. Rigg, and then suddenly it stops somewheres in the Prosecutor's office, takes charge of it, and starts in asking the same questions, apparently which had already been asked of them before. Now, I am objecting to any of the testimony which was given by this defendant, Mr. Elwell, to the Prosecutor's office on the theory, first if the Prosecutor's office had absolutely no power, no authority, to make their investigation of this type, and that since the investigation came originally from the Supreme Court that the Prosecutor's office would not usurp the power of the Supreme Court which is directed to a court itself, which the Supreme Court has a right to do, and that therefore, the Prosecutor's office could not have the authority from anyone or under their rights under the Prosecutor's office to ask the questions of these various people who were not defendants at that time, and [fol. 155] then present their own cases to the Grand Jury based on the questions which they asked these defendants, and then seek an indictment on the testimony actually submitted by the Prosecutor and not just on the testimony submitted by the people who were giving the answers to the questions.

The Court: No, I think we have here the same situation that we had as far as Mr. Rigg was concerned. I don't remember correctly, whether there was definite testimony from Mr. Rigg that he had resigned before the investigation had been completed, that testimony was in another case, so I can't use the testimony of course, of another case to pass upon this here, but I do have a strong recollection of what Mr. Kaplan got on the stand and testified, that Mr. Kaplan did testify that he was of the Prosecutor's office

and that it was ordered I think by the Supreme Court to continue with the investigation which apparently Mr. Rigg had not completed. Now again, I don't remember any cross examination of Mr. Kaplan, or his authority and alike, when those questions were asked him, so for the purpose of this, it would seem to me that I am bound to consider this the only testimony in the case so far that he had the right to do. I would assume there may be some type of an order of it on record which was not produced in court. Again, may I say, my thought is that on cross examination if you felt that the order was illegal or if an order had never been issued, so to do on the part of the state, to show that he did have the right so to do, he says that he had the right, and as I said, that is the only question before the court at the present time, may I say this, do you know whether or not there is an order on record, Jim?

Mr. Aiken: I have never seen it, Your Honor, I don't know where it is.

Mr. Sherman: There is nothing in it, if you notice, Your Honor, on this, or when Mr. Rigg tells each one [fol. 156] of these individuals right from the beginning that he has been appointed by the court to make the investigation, but you notice in the Prosecutor's questions and answers, he does not say to any of them that I have been appointed to take over this. He just says now, let's go right on where we left off, where Mr. Rigg left off, and that seems to be the basis of that. He says now, the caption of these proceedings I just read is a matter in which you have testified in a previous statement.

The Court: Of course, the theory therefore on that would seem to me, Mr. Sherman, was this was merely continuing the place of Mr. Rigg, who from at least one of the previous cases I know resigned before the investigation was complete. Now, granted, he didn't tell him that he resigned, but—

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[fol. 161] The Court: Now gentlemen, we are back on page 2 of the statement taken from Eugene D. Elwell. The person asking the questions being Sidney Kaplan, the date being Friday the 28th of December, 1962, the place being Camden County Prosecutor's office, and those present being Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, of the Prosecutor's office, and Detective John Corbin of the New Jersey State Police. Page 2.

"Eugene D. Elwell, sworn, By Mr. Kaplan: Ques-
[fol. 162] tion, Now, the caption of this proceeding, which I just read is a matter in which you have testified on a previous date, I believe November 2nd, 1961, and which Bud Rigg a Deputy Attorney General interrogated you and other officers of the Barrington Police Force. Answer, Yes. Question, Your name is Eugene D. Elwell? Answer, Yes. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, And your rating? Answer, Patrolman. Question, How long have you been a member of the force? Answer, Ten and a half years, eleven years in February. Question, We have been following a certain pattern in this interrogation, and we will get to that. But, before we do, I want to advise you anything you say to me must be of your own free will, and without being the result of any threats, coercion, or promise of reward, and I advise you further you do have a right as any other citizen of New Jersey has, under our laws, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this right, if you make a disclosure pertaining to this investigation, you thereby waive this right of privilege with reference to any phase of this investigation that might involve you. Do you understand that? Answer, Yes sir. Question, Understanding that, you are willing to be interrogated? Answer, Yes sir.

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[fol. 174] The Court: All right, stop here and that's the end of the Elwell statement. Gentlemen, we'll take our noon recess at this time.

(Noon recess)

The Court: Well, the next statement that is before me is Mr. Holroyd's. Supposing we handle that one. Prosecutor's office, Camden, present Sidney Kaplan, Assistant Prosecutor, Captain Philip J. Large, County Detective, Detective John Corbin of the State Police. Statement of James H. Holroyd, given in the presence of each of the persons.

"James H. Holroyd, sworn, By Mr. Kaplan: Ques-
[fol. 175] tion, Your name is. Answer, James Holroyd. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, What capacity? Answer, Lieutenant. Question, I assume you are familiar with the purpose of our being here this morning. It is in connection with an order of the Supreme Court directing an investigation into the handling of traffic tickets in Barrington. Answer, Yes I am. Question, And you have testified before in this matter? Answer, Before Mr. Rigg. Question, The Deputy Attorney General? Answer, Yes. Question, I am going to ask you some questions, but before I do, I want to advise you anything you say must be of course of your own free will, and without any threats, coercion, promises or reward, and I advise you further that you have as has every citizen under the laws of New Jersey, the privilege of refusing to disclose any matter which might incriminate you, and further with the full knowledge of this right, if you make any disclosures pertaining to this investigation, you waive that right of privilege with reference to any phase of the investigation which might involve you. With that understanding, are you ready to proceed? Answer, Yes. Question, For the sake of expediency, and so that this doesn't take up too much time, we have adopted a procedure where we simply ask you questions, and you will answer them, and generally they pertain to particular tickets, and when I use the term ticket, I mean the complaint and summons and whatever else becomes a part of the assembly.

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[fol. 183] The Court: Well, again, lest there be any misunderstanding, Counsel didn't make any specific objections, the same objections as previously made in the other statements will carry over on all of these here as far as the statement of Mr. Holroyd is concerned.

Now, the next statement I have before me, taken on Wednesday, December the 19th, 1962, Prosecutor's office, Camden, New Jersey, present is Sidney Kaplan, Esq., Assistant Prosecutor, Philip J. Large, Camden County Detective Bureau, Detective John Corbin of the New Jersey State Police and of course Mr. Donald Murray.

"Donald Murray, sworn, By Mr. Kaplan: Question, Your full name? Answer, Donald Francis Murray. Question, You are a police officer in Barrington? Answer, Yes. Question, Any special title? Answer, Patrolman. Question, On a previous occasion, you did give some testimony before Bud Rigg, a Deputy Attorney General? Answer, Yes sir. Question, That was in the same investigation? Answer, Yes sir. Question, And at that time he advised you of your rights and I will repeat them for the record. I want to advise you anything you say to me must be of course, of your own free will, and of course, without any threats, coercion or promise of reward. I'll advise you further that you do have, as every citizen has under the laws of New Jersey, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this, if you make any disclosures pertaining to this investigation, you thereby waive this right of privilege with respect to this investigation which might involve you. Are you willing to waive any immunity and proceed to the [fol. 184] questioning. Answer, Yes sir. Question, I want to ask you some questions about certain traffic summonses and complaints, and all that sort of thing that you were part of, either as the complaining witness or borough clerk.

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[fol. 199]

IN THE CAMDEN COUNTY COURT

June 3, 1963
Camden, New Jersey

LAWRENCE GARIFO, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, what is your professional occupation?

A. Shorthand Reporter.

Q. And how long have you been a shorthand reporter?

A. Approximately 14 years.

Q. Are you certified to take testimony in the courts of New Jersey?

A. Yes.

Q. Now, I understand that on November the 2nd, 1961, you took certain statements from each of the three defendants in this case, is that correct?

A. Yes, sir.

Q. Can you tell us where you took those statements, who did the questioning, and who was present?

A. The statements were taken in Barrington, New Jersey, on Thursday, November the 2nd, 1961, interrogated was Bud M. Rigg, Deputy Attorney General of the State of New Jersey, also present were John Corbin, of the New Jersey State Police, and John F. Gerry, Esquire, who was present for the police department, and myself.

Q. Now, I think you know, Mr. Garifo, that the court [fol. 200] has marked certain portions of that transcript and I think you are familiar with the markings?

A. Yes sir.

Q. I wonder if you would begin to read those portions that have been marked to be read by the judge.

The Court: Before that, does counsel have any questions to ask Mr. Garifo?

Mr. Sherman: No.

Mr. Gerry: No.

The Court: I believe this is Mr. Elwell's statement first.

Mr. Aiken: Yes.

Mr. Sherman: Your Honor, may I have the right reserved to ask this witness a few questions after he has completed the reading?

The Court: Yes, you may do it either now or when he is finished. Anytime during the appearance on the stand, you have that permission.

The Witness: The statement reads as follows: "Eugene D. Elwell, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Elwell, as you know, I have been directed by the Supreme Court order dated the 30th of June, 1961, to investigate irregularities in the handling of motor vehicle matters in the Municipal Court of Barrington, together with the conduct of all persons connected with this Court, and specifically the police Department. It is for this reason I have asked you to be here today, so I could ask you certain questions pertaining to this investigation. I want to advise you anything you say to me must of course be of your own free will and of course without any threats, coercion, or promise of reward. I advise you further that you do have as every citizen has, under the laws of New Jersey, a privilege to refuse to disclose any matter which may tend to incriminate you, [fol. 201] and further with full knowledge of this investigation, you thereby waive this right of privilege, in relation to any phase of this investigation, which might involve you. This privilege is somewhat limited, under our laws, to the extent that a police officer who under oath during investigation, fails to testify or answer a specific question does thereby jeopardize his position on the force and may be removed under the proper proceedings. Understanding that, do you wish to proceed this morning and answer the

questions which I intend to put to you? Answer, I do, sir. Question, You are a police officer in the Borough of Barrington? Answer, Yes sir. Question, How long? Answer, Nine and a half years. Question, Do you have any rank other than patrolman? Answer, No. Question, Have you during the nine and a half years and specifically during the years 1958, '59, '60, and '61 ever acted as clerk of the municipal court? Answer, Yes sir. Question, Did you hold that post for any period of time or did you just fill in occasionally? Answer, 1959. Question, You were clerk during 1959? Answer, Yes. Question, Have you acted as clerk since then? Answer: Yes, my duties are on the desk. Question, Can you tell me generally what your duties were as clerk during 1959? Answer, Keep the records, as far as the books were concerned, court records, accept fines. Question, Make out receipts? Answer, Yes. Question, Did you make deposits? Answer, Yes sir. Question, Where did you make the deposits? Answer, Camden Trust in Runnemede. Question, I show you a book labeled Municipal Court Traffic Docket, containing entries of traffic matters showing their disposition and ask you if these entries during 1959 were made by you? Answer, Yes, sir. Question, Now then, during the same period of time in 1959, and down through the present time, that you acted as clerk, were you also active as a police officer? Answer, Yes sir. Question, And did you issue summonses during that period [fol. 202] of time? Answer, I did sir. Question, Did you personally have occasion to alter the charges in any summonses issued by you during that time? Answer, Yes. Question, Will you tell me what motivated these changes? Answer, Well, hardship cases, as such a person who would possibly receive a ticket, and find out later on, come to you, maybe hardship, money-wise or something like that, and go along and try to do the man a favor. Question, Are you giving me to understand, Mr. Elwell, that the only motivation then was hardship? Answer, Well friends, other officers. When I say friends, other officers, they might come

to me and say a certain ticket I had issued was a friend of his, and he would have a reason that he would want to see the ticket changed, and ask me if it was all right by me. And, I would go along with the officer on it. Question, Were there any reasons for changing these alterations other than hardship or friends of fellow officers in the department? Answer, No sir. Question, They are the only two reasons? Answer, As far as I can remember. Question, Can you tell in relation to these alterations which officers have contacted you? Answer, I would say all officers of the department at one time or another, the time I have been on the police department, I'd say just about every member of the police force. Question, Have you been contacted by members of other police departments as to alterations? Answer, That's possible. I don't recall any definite particular one, but it's possible. I would work along with other police departments very closely around here. Question, What do you mean you work along? Answer, Within our police duties and all that, we're connected very close. Question, I am specifically referring to alterations of summonses. Do you work closely along with them on that? Answer, I can't definitely say any particular case where I remember actually changing one for another, an officer from another department. Question, [fol. 203] In relation to summonses issued by other officers within this department in Barrington, have you asked any other officers to alter summonses for friends of yours or hardship cases that you knew about? Answer, That would be possible. I imagine I did, I couldn't actually state any particular one. I can't remember one definitely coming to me for a favor, as far as seeing other officers. Question, Now, then, during 1959 and any time before or after that, that you were acting as clerk, how would you handle the alterations so far as the reflection on the alterations in the docket book? Answer, In the docket book? Question, Yes. Answer, Well, as violations clerk, the summons was altered to parking, it would be entered in the docket book as a parking violation. Question, Initially, it would be entered,

and I am specifically referring to the category offense, would you initially put parking? Answer, Yes, parking would be marked the same way. Question, I understand then you did not enter the ticket with the defendant's name, and the offense, until after disposition had been accomplished, is that correct? Answer, That's correct. Question, To your knowledge, have you ever altered a traffic summons or asked one of the other officers to alter a summons without the defendant's knowledge? Answer, No. Question, It was always at the behest of the defendant? Answer, Yes, definitely. Question, Did you ever receive any consideration or thing of value for doing these alterations or requests? Answer, No sir, definitely not."

The Witness: That is the end of Mr. Elwell's statement.

Mr. Aiken: Will you go on to Mr. Murray's next, page 130.

The Court: Excuse me, did you want to ask any questions, Mr. Sherman?

Mr. Sherman: I could ask the questions at the end, it will be a general question.

[fol. 204] The Court: All right. In other words, you prefer to wait until everything is read out of this book. You may continue.

The Witness: "Donald Murray, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question, Mr. Murray, as you know, I am working a Supreme Court order issued on the 30th day of June, 1961, directing me to investigate certain irregularities in the handling of municipal traffic matters in the court, and by various members of the police department in Barrington. It is pursuant to that order that I ask you to come in here today, and ask you questions. Before I do, I want to advise you that anything you say must be voluntary, and of your own free will, without any coercion or threat or promise of reward. I want to advise you also anything you say may be used against you or any person in any subsequent criminal proceeding in our courts in New Jersey. You do have

a privilege to refuse to disclose any matters which you feel would tend to incriminate you. However, being aware of that, and if you make a disclosure, you waive that privilege or right in relation to any matters pertaining to this investigation, there is one limitation of your privilege to the event that a proceeding may be brought against you under the laws of our state as a police officer, to have you removed from office if you refuse to answer my questions put to you pertaining to your official duties. Understanding this, Mr. Murray, do you wish to proceed this morning and answer the questions I put to you? Answer, Yes. Question, How long have you been an officer of the Borough of Barrington? Answer, Since 1957, May. Question, Have you ever served as court clerk or violations clerk? Answer, Yes. Question, When? Answer, 1960, I was violations clerk. Question, And court clerk also? Answer, Yes. Question, It is a combined position, is it not? Answer, That is correct. [fol. 205] Question, And during the course of this year, and 1959, would you act as clerk if you were on duty at the time someone came in? Answer, That is right. Question, And issue a receipt? Answer, Yes. Question, You are aware, I am sure, officer, of the practice here by various members of your police department of altering summonses and complaints and motor vehicle matters. Answer, Yes. Question, Have you engaged in that practice yourself? Answer, Yes. Question, What would motivate you, Mr. Murray, in altering a complaint? Answer, What do you mean? Question, Why would you do it? Answer, Why would I do it, someone came to me with maybe a hardship or something of that nature, where it meant a man's livelihood or something of that nature, I would consider it. Question, You would do it if the conviction of the offense originally charged would take away his livelihood? Answer, Yes. Question, Would you do it for any other reason? Answer, Not specifically. Question, That is the only reason you ever altered a summons? Answer, There may be other reasons. Question, Such as? Answer, I can't recall what

the reasons would be. Question, Would you do it on the basis of friendship? Answer, Possibly. Question, If you had inadvertently issued a summons to a friend of yours, you would thereafter alter if he prevailed upon you to do so? Answer, Possibly. Question, Would you alter a summons if a friend of yours contacted you and said a friend of his received a summons by you? Answer, That is possible. Question, Have you ever been contacted by members of other police departments to alter summonses? Answer, That is possible. Question, Have you? Answer, I couldn't say definitely, sir, for any police department, I don't know. Question, You don't know whether you have ever been contacted, you don't recall ever being contacted by a police officer from another department? Answer, I was contacted but I can't specifically it was John Doe. Question, You [fol. 206] can't recall specifically this happening? Answer, It has happened. Question, It has happened? Answer, Yes. Question, Have you been contacted by any members of the governing body here within Barrington? Answer, No. Question, Any employee within the municipal government? Answer, No sir. Question, Never? Answer, Never. Question, On any case? Answer, No sir. Question, Ever receive any thing of value or any reward or any gift? Answer, No sir. Question, For altering summonses, have you ever altered a summons without the defendant's knowledge? Answer, No sir. Question, I have here a group of summonses apparently issued by you, Mr. Murray, which again have apparently been altered. What I would like to do, if you will, is to have you go over each one of these and tell me what the particular hardship was, or what the surrounding circumstances were which prompted you to alter these summonses or at least consent to their alteration by someone else? Answer, Yes."

The Witness: That is the end of Mr. Murray's statment.

Mr. Aiken: Proceed now to Mr. Holroyd's statement, page 118.

The Witness: "James D. Holroyd, having been duly sworn, was examined and testified as follows: By Mr.

Rigg: Question, All right, under a Supreme Court order dated the 20th of June, 1961, I have been directed to investigate irregularities in the handling of municipal court vehicle matters in the Borough of Barrington, and how they have been handled by the court, and local police departments. As a result, I have asked you to come in here today so that I may put questions to you. Answer, Yes. Question, I want you to realize fully, however, any answers you give must be voluntary, without any coercion, threat, or promise of reward, and those answers may be used against you or any other person. You have a privilege to [fol. 207] refuse to disclose any matters which might tend to incriminate you, however if you make such a disclosure you thereby waive your right or privilege in relation to any phase of this investigation in the future. Under our laws, as a police officer, you are subject to a statute which provides however, if you exercise this right or privilege, a proceeding may be instituted against you to have you removed from office. Answer, Yes. Question, Knowing all of this, you are willing to proceed? Answer, Yes. Question, How long have you been in the department? Answer, Ten years. Question, How long have you been a lieutenant? Answer, Since '58, December of '58. Question, You are undoubtedly familiar with the problems here, the practice of altering motor vehicle summonses and complaints? Answer, Yes I am. Question, By the various members of the department? Answer, Yes. Question, I assume you have engaged in this practice yourself? Answer, Yes I did. Question, Am I correct in my understanding that in any relation to any summonses originally issued by you, which may have been altered by another officer, this would not have been done without clearing you first? Answer, He had to. Question, That was the practice? Answer, Yes. Question, Was this practice with you or at the chief's direction? Answer, No sir, it was at nobody's direction. If a summons was issued, the man came to you and would ask you, the chief would know nothing about it at all. He didn't have to be informed

about this. Question, Except in those matters he may come to you himself and in those particular situation? Answer, Yes sir, right. Question, Can you tell me, Lieutenant, what would prompt you as an officer and as a Lieutenant in the police department to engage in this practice of altering summonses? Answer, I have done it for friends, personal friends, hardship cases, and I didn't think there was too [fol. 208] much harm in it for the fact at the time the administrator of the courts sent his fellow down here. Question, which fellow is that? Answer, Well, I don't know who the fellow is, I just hear the other fellows talking, a fellow came down here, I don't know when it was, but he had seen this practice going on. Question, It's a very interesting thing, one more chap, maybe he is the fellow who is telling this to everyone, everyone who has come in here is telling me and when I ask you who told him who had seen it, none of them know who told them. It must be Standish. When you say you would alter these for friends, would they be your own summonses as well as summonses issued by other officers? Answer, Other officers, I would go to them, the issue the summonses, I would go to the other officers and ask them and if they said all right, I would go along. Question, You would tell the other officers this would be a friend of yours? Answer, I wouldn't tell the fellow that wrote the summons, there may be another fellow— Question, A defendant may have a friend who is a friend of yours? Answer, That is right. Question, Would that be the only motivation, just a friendship, down through the chain, or would there be some hardship involved too? Answer, According to the circumstances, on the ticket. Question, Was there any occasions say speeding changed to parking, was there any cases where it was just friendship or would it take a little more persuasiveness than a friendship? Answer, I couldn't give you the actual circumstances. Question, Suppose you and I were close friends and you gave Detective Corbin a summons, and I came to you, Detective Corbin is a close friend of mine, would you give him a break on it, would you

do that, forgetting who we are for a minute or would I have to say Detective Corbin is married with five children, he has a job, he is going to lose his license. Answer, That would be more or less the line that we used to get, to the extent a friend would call me, he would say that the fellow [fol. 209] may be up against it, or his children, he needs his driver's license and went along. Question, So it wasn't friendship, the friendship happened to be the method of connection or contact, but it was hardship? Answer, And friendship. Question, Would it be for friendship, would you do it for a friend without any hardship involved? Answer, If he was a very good friend, I imagine I would. Question, And you would do it then for a defendant, you did not know, if he were a friend of a very good friend, is that correct? Answer, Well, possibly. Question, Did you ever receive any gifts or rewards for this activity? Answer, No sir. Question, Do you know whether any of the other officers have? Answer, Not to my knowledge. Question, What did the judge think of this practice? Answer, To be truthful, I don't know whether he is aware of it or not. Question, Never said anything to you about it? Answer, No sir, he did not. Question, What I would like to do, Lieutenant, is go over the summonses which I have here, which have been issued by you and subsequently apparently altered and have you explain to me just what the circumstances were in relation to each one. Answer, All right. Question, I show you summons and complaint number 4453, issued on September, it looks like 15, maybe 13, 1959, to R. Wright, charging Mr. Wright with speeding, which charge was changed to parking in prohibited area. Why was that one changed? Answer, I can't recall it. Question, Can you tell by looking at it whether you changed it? Answer, I don't think so, it is possible I may have. Question, Why don't you think so, Lieutenant, what is it? Answer, That pointed before, I can't recall the case, it's been 1959. Question, If you changed it yourself, do you think you would know? Answer, I don't know, it's been two

years ago. Question, Were there that many involved? Answer, I don't know. Question, Have you altered so many or participated in the alteration of so many, you don't re-[fol. 210] member? Answer, No, that is not it, it is two years ago. Question, You make a practice or have you on occasion, when you stop somebody for speeding, to tell them how much the fine is so they can mail it in? Answer, No."

The Witness: That is the end of Lieutenant Holroyd's statement.

Cross examination.

By Mr. Sherman:

Q. The witnesses were examined individually and separately, is that correct, to your knowledge?

A. That is right.

Q. And taking the testimony of Mr. Elwell, you read from page 3, I believe, to page 9, inclusive. Would you look on your record there, and tell the jury how many pages of testimony there is for Mr. Elwell?

A. 33 complete pages, and 2 lines on page 34.

Q. That's all. Thank you.

Cross examination.

By Mr. Gerry:

Q. Mr. Garifo, did you say that these statements were taken not in the presence of the other defendants in each case?

A. That's right.

Q. Taken separately?

A. Yes.

Q. Have you similar records of the number of pages that were involved in the full and complete statements taken of Officer Murray and Lieutenant Holroyd?

A. You want the total of the three?

Q. No, the total of each one.

A. Well, Mr. Elwell was 33 pages and 2 lines, Mr. Murray was approximately 32 pages, and Lieutenant Holroyd was approximately 19 pages.

Q. Now, of the 19 pages of the statement taken of Lieutenant Holroyd, how many pages did you actually read?

A. Approximately 7.

[fol. 211] Q. And of the 32 pages of Officer Murray's statement, how many pages did you read into evidence?

A. Five and a half.

Cross examination.

By Mr. Sherman:

Q. How many pages are there in this entire book from which you are reading?

A. Allowing for half pages, at the end of certain witnesses, there is approximately 245 pages.

Q. And that would include statements of other people, and other officers, beside the three which are on trial today, is that correct?

A. That's right.

Q. So that out of an approximate total of 84 pages, of the three, a total of 22 pages or so was read?

A. That's correct.

Mr. Aiken: Mr. Garifo, statements of how many offices were taken on that day by Mr. Rigg?

The Witness: Nine, including the three defendants.

Mr. Aiken: Now, I understand also that at a later date your partner, Mr. Albert, took certain statements from the three defendants, is that correct?

A. Yes.

Mr. Aiken: And I believe that the Court has those statements marked similarly, in relation to the three defendants, and I would ask you to read those statements starting with Mr. Elwell's.

The Witness: This statement of Eugene D. Elwell, was taken on Friday, September 28, 1962 in the Prosecutor's office in the courthouse, Camden, New Jersey. Present, Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. [fol. 212] Large, Detective John Corbin and Mr. Albert.

"Eugene D. Elwell, sworn, By Mr. Kaplan: Question, Now, the caption of this proceeding which I just read is a matter in which you have testified on a previous date, I believe November 2nd, 1961, and which Bud Rigg, a Deputy Attorney General interrogated you and other officers of the Barrington Police Force. Answer, Yes. Question, Your name is Eugene D. Elwell? Answer, Yes. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, And your rating? Answer, Patrolman. Question, How long have you been a member of the force? Answer, Ten and a half years, eleven years in February. Question, We have been following a certain pattern in this interrogation, and we will get to that. But, before we do, I want to advise you anything you say to me must be of your own free will, and without being the result of any threats, coercion, or promise of reward, and I advise you further you do have a right as any other citizen of New Jersey has, under our laws, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this right, if you make a disclosure pertaining to this investigation, you thereby waive this right or privilege with reference to any phase of this investigation that might involve you. Do you understand that? Answer, Yes sir. Question, Understanding that, you are willing to be interrogated? Answer, Yes sir. Question, I have a few, where you were the complainant and where the receipts were taken in by someone else, and I will ask you the same question in regard to these. Number 4585, December 16th, 1959, Anthony M. Rossi, and operating offense charged specifically speeding, as evidence by the section and a check mark in the speeding block, the original speed charged and the speed allowed cannot be distin-

guished, because there has been heavy ink run over those figures, and there is evidence they were obliterated on all [fol. 213] three of the instruments that are here, being the complaint, the copy of it, this police record, and the summonses which goes to the offender. There is no evidence of how the case was disposed of, the offender's copy is attached and he has signed it in the proper place and Officer Murray issued a receipt for five dollars on a parking charge, under the date of January 8, 1960, and I ask you whether or not you made the alteration on that complaint. Answer, I can't say whether I did or not, no sir, nothing there to identify it. Question, You didn't have anything to do with the receipt? Answer, No sir. Question, None of it is in your handwriting? Answer, No, it is Officer Murray's. Question, Would you know who got your consent to make the change if you didn't make it, would you remember that? Answer, No sir, I don't know who came to me, one of the men I guess. Question, Do you know the defendant? Answer, No sir, I do not. Question, This matter was in 1959, when you were violations clerk, and terminated in January. That would be the reason Murray's name would appear? Answer, Murray was violations clerk in 1960. Question, Number 4712, February 19th, 1960, Carmen Sciatto, operating offense shown it can be distinguished under heavy inking, there had been section 98 inserted originally, and the speeding charge as in evidence from the defendant's summons, was 60 miles an hour in a 40 mile zone, there is no evidence how this matter was disposed of, there is the offender's copy of the summons in which he has signed an appearance, plea and waiver, and Murray signed a receipt for five dollars, as a fine imposed for parking, and I ask you whether or not you made the strikes and whether or not you altered that complaint? Answer, There is nothing on there I can identify as mine. Question, When you hand a summons to somebody, you detach it from your book, I assume. Answer, Yes. Question, And take out at some point, your yellow copy?

[fol. 214] Answer, Yes. Question, And you would have a copy holder? Answer, Yes. Question, And each officer would put his own copy on the complaints and summonses in the cubbyhole or through the violations clerk? Answer, He would put his own particular copy in his own cubbyhole. Question, Where would the officer put the white or blue, it looks green to me, but you said blue, where does it go? Answer, In the violations cabinet. We have a cabinet there in fact I think we put the complaint in the cubbyhole too. Question, I call your attention to the fact that the nature of the eradication or the obliteration takes a certain form, thick lines and so on, and when you follow through to a copy of the summons, you find the carbon effect as shown on the offender's copy, shows it to be the same form as that on the original. Would that have anything, if I don't make myself clear, ask me. Look at the erasure on the summons and on the defendant's copy, they seem to be the same form, while the complaint shows obliteration by ink, the offender's copy is an attachment as a carbon obliteration. Answer, That would show the three were together when they were altered. Question, You say they must have been all together? Answer, Yes. Question, You made the complaint? Answer, Yes. Question, Can you explain whether or not it was made in the field right after you had made the charge or done later at headquarters? Answer, Done later. I don't recall changing one at the scene of issuing the summons. If it is all right, I'll make a marker here, if I'm not mistaken there is no carbon used to do this, you don't use carbon paper in between. Question, You made a mark to show what happens? Answer, Yes, the three were on top of each other when they were scratched out. We don't use carbon paper. Question, You say you never make a change right in the field while patrolling? Answer, No sir. Question, There was no possibility that the change was made when the offender [fol. 215] came in to pay his fine and this was put underneath? I am only speculating that that is a possibility. An-

swer, The whole three copies has to be there when it was changed. That is the way it looks. I don't know whether the defendant was there at the time all three copies were. Question, Do you remember being asked if it was satisfactory or proper to make this change whether you consented? Answer, I don't remember, but I would have to be asked about it, which was our policy. I don't remember the summons just particularly, no. Question, Your answer is you didn't make the change? Answer, May I see it again. My answer is I couldn't identify it as mine, there is nothing there to identify it as mine. Question, Well now, if you didn't make it there, then there could've been apparently one other person who might have made it and that is Murray. Do you know whether Murray made the change? Answer, I don't know whether he did or not, I couldn't say he did. He was violations clerk at that time. Question, Yes, he was violations clerk, is that his signature, do you know? Answer, Yes. Question, This change then, must have been made at headquarters, if you didn't make it in the field, you say you didn't make it in the field. Answer, That is right. Question, And apparently, the alteration was made after the fine had been sent in. Would that follow if the offender had sent in his fine and his summons, his fine by way of cash or check, and the alteration must have been made then, wouldn't that be the facts because in this particular case, the white copy of the receipt is still present, which indicates as I understand it the defendant himself didn't appear, but sent in his fine. Answer, I'm not sure I understand you. Question, It is a long question. You have told me you never made a change in the field while you were on duty and patrolling? Answer, That is right. Question, And if the offender had come in and paid his fine either cash or check, he would've been [fol. 216] given a white receipt, wouldn't he? Answer, Generally. Question, Are there many occasions when a person appears and they are not given one? Answer, Sometimes they don't want one. Question, That isn't the

general practice? Answer, No. Question, Let's go along. Answer, They generally receive a receipt as soon as they pay the fine. Question, If he didn't receive a receipt for his money, whether it be five dollars or something else, he must not have been present and must have mailed it in. Answer, It is possible he may not have been present, he could've given it to the officer who was having the alteration made, and he then turned it into the violations clerk. Question, And in that case, who would've made the change, the intermediary, the officer who accepted the money? Answer, He was the one who would ask for the change, yes, but as far as scratching out, it could be made by him, myself, or the violations clerk. Question, In this particular case? Answer, In any case at all. Question, You are not accusing yourself, you don't remember? Answer, I don't remember this one, the one requesting the favor being done would naturally come to me about it first, he would have the five dollars, whatever it would be, for parking and ask if it was all right and I said yes, and the five dollars would be turned in with the defendant's copy and the one requesting the favor would scratch it out or I would have done it, or just let the five dollars be attached to it and Murray, as violations clerk, would scratch it out. In that case, the defendant wouldn't receive a copy of his receipt. Question, Then the officer who interceded, and who took the money, would be the one who had access to the white copy and blue copy, and that was right at headquarters? Answer, We all had access to all the copies. Question, Then one of the officers could've gone right to the cubbyhole, taken the offender's copy, put it behind yours, and made the change? Answer, Yes. [fol. 217] Question, Incidentally, there is no evidence how this matter was disposed of, and the receipt was for two dollars by Officer Holroyd, on a charge of illegal parking. Now, this group I am going to go through consists of cases where you did not make the complaints in all cases, your name appears on a couple but where you did accept

the fines. Question, Number 4453, R. Wright, charge of speeding 41 miles an hour in a 25 mile zone, and the section of the statute is given they have been lined through and the next in the "prohibited area" portion of the ticket which was made originally by Holroyd, there is no disposition shown on the back of the complaint, the offender's copy of the summons is present, and signed by him, and there is a receipt signed by Murray acknowledging five dollars for a parking charge, and I am asking you whether or not you are familiar at all with that particular case. Answer, I don't recognize it. Question, Now with reference to this Wright matter, you may not know the answer to this question I will ask you, a Robert Wright, who was the offender in this case and who has been identified by us as being such, has given us a check made by him to the Borough of Barrington for fifteen dollars, and it is endorsed "Borough of Barrington" and it was deposited just a couple days after its receipt in the violations bureau, I assume, of which you were not the clerk, and ask you whether or not that "Borough of Barrington" is in your handwriting? Answer, Yes it is. Question, That is your handwriting? Answer, Yes. Question, And that is part of the deposit that was made? Answer, Yes. Question, In this particular case, this receipt that Murray made wasn't made until January 8th, 1960, which is a couple of months following even longer. Can you explain why that receipt was withheld that length of time and why you received a check of fifteen dollars and you didn't account for it by a receipt? Answer, As far as time, at that [fol. 218] time I had an awful lot of back log of summonses which were not done, and which I didn't finish up until the end of the year. That would account for the time. Question, From your time, it seems to be an undisputed fact you have acknowledged endorsing it, and the bank stamp shows it was deposited a couple of days after the receipt by you. Why wasn't there a receipt for fifteen dollars? Answer, I can't explain that, sir, I know Murray

and I were both working together at that time. Question, This is in January, and this is October. Answer, The receipt was made out in January. Question, That is Murray's receipt. When you put it in the bank, how do you justify not entering somewhere you got fifteen dollars from Wright on this particular occasion? Answer, I have no explanation at all. Question, Pardon me? Answer, No explanation at all. Question, You don't remember the case? Answer, No, I can't place it at all. Question, Nothing unusual about that would occur to you? Answer, No sir, I can't recall it at all. Question, Well, shall we discuss possibilities right here? Answer, I don't know what possibility it could be, unless there was a mistake somewhere in my method of bookkeeping. Question, In your capacity of violations clerk, you came into possession of cash from time to time? Answer, Yes sir. Question, And when you entered, we'll say a five dollar entry on this white slip and this is not particularly personal, I am trying to get to the bottom of this, when you signed this receipt for five dollars and you had ten dollars laying alongside of it which had been received in cash, and assuming that was the only business for the day, and you were to make a deposit of two different five dollar fines and this was another five dollar fine, you could have used a fifteen dollar check to cover the two five dollar fines and this receipt, that is not technically a fact, but that could happen? Answer, It could happen, but it didn't. My money totaled up right. Question, [fol. 219] Naturally, it would if you were to only charge yourself with five dollars in this particular case, when as a matter of fact you received fifteen dollars, it would total up all right if the two different dollar cash items let's say the two five dollar items were diverted. Answer, Yes sir, that could happen. I didn't work on these tickets every day. I might go a week or two weeks before I did any book work on violations. I didn't have a chance to do it every day, but I took my tickets in step. All my checks

and the cash money separating them in twentys and tens all down the line, and entered them into my docket book and my cash book. Question, That was your routine? Answer, Yes, it is possible he paid a five dollar fine, in other words, a ticket that was changed to a parking must've been credited for the full fine. The wrong ticket was changed or something, figure that, I know a couple myself, I know that I was working on the books and a couple of tickets I was supposed to change, I don't remember at this time which ones they were, but I thought I had the right ticket when I changed it. That could be it, I don't know, I am not a bookkeeper and never was. I took this job as violations clerk for extra money and I am not a good bookkeeper, and apparently, that would be the only answer I could come up with, a mistake in my bookkeeping itself. Question, Fifteen dollars was the usual fine you imposed for speeding, regardless of what the schedule showed? Answer, Yes, ten and five. Question, When these people sent in fifteen dollars, this was sent in for a speeding violation? Answer, Yes. Question, And whether anybody interceded or not, fifteen dollars was it, if someone interceded on a speeding charge to have it reduced to parking, in all of the other cases we have seen you simply acknowledge the receipt of five dollars, always five dollars, and the same here, and the same here, even though you got fifteen dollars. Of course you are not answering those questions. When these intermediarys [fol. 220] came to you, oh, you said no intermediary ever came to you. Answer, An outsider? Question, Yes. Answer, Not that I recall. It is possible, but I don't recall any offhand that came to me personally. A lot of times as I had stated before, I think if someone had gone to Officer Page and given him five dollars, he would slip the five dollar bill on the ticket and not change it, and I would know by the five dollars it is supposed to be changed to parking, and when I worked on the books, I changed it. The only thing I could figure this where a five dollar bill

was on a ticket, supposed to be changed to parking, when I took the five dollars off that ticket, plus all the other tickets, plus the checks for all the other tickets, instead of changing the one, the five dollar bill was on, this check was sent in for the one that should not have been changed in the first place, for the one that should have paid the full fine. That is the only explanation."

The Witness: That is the end of Mr. Elwell's statement.

Mr. Aiken: Will you now go on to Mr. Murray's, please.

The Witness: This statement was taken on Wednesday, December 19, 1962, in the Prosecutor's office in the Court House, Camden, New Jersey, those present were Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, and Detective John Corbin and Mr. Fred Albert, the Court Stenographer. "Donald Murray, sworn: By Mr. Kaplan: Question, Your full name? Answer, Donald Francis Murray. Question, You are a police officer in Barrington? Answer, Yes. Question, Any special title? Answer, Patrolman. Question, On a previous occasion, you did give some testimony before Bud Rigg, a Deputy Attorney General? Answer, Yes sir. Question, That was in the same investigation? Answer, Yes sir. Question, And at that time he advised you of your rights and I will repeat them for the record. I want to advise [fol. 221] you anything you say to me must be of course, of your own free will, and of course, without any threats, coercion or promise of reward. I'll advise you further that you do have, as every citizen has under the laws of New Jersey, the privilege to refuse to disclose any matter which may tend to incriminate you, and further with full knowledge of this, if you make any disclosure pertaining to this investigation, you thereby waive this right of privilege with respect to this investigation which might involve you. Are you willing to waive any immunity and proceed to the questioning? Answer, Yes sir. Question, I want to ask you some questions about certain traffic summonses and complaints, and all that sort of thing that

you were part of, either as the complaining witness or borough clerk. Have you ever been violations clerk in Barrington at any point in your service? Answer, Not that I know of. The judge put up a notice we could accept bail in a case, where it was three o'clock in the morning, something of that nature, but we have never taken any fines. Question, You have never acted as a violations clerk? Answer, No, since I have been on the force? Question, Yes. Answer, From 1960 to 1961. Question, You were violations clerk during 1960 to 1961? Answer, Yes. Question, Now, did you handle matters for the violations bureau or were there other officers who did the work? Answer, I was designated violations clerk and the other officers were Deputy Violations Clerk and they handled summonses and monies and receipts just as well as I did. Question, They disposed of matters in the violations bureau? Answer, Yes. Question, Were these monies generally entered by you or did they keep their own individual accounts? Answer, No, they were generally entered by me. Question, You kept the books? Answer, Yes. Question, And made the entries of fines received and for [fol. 222] what reasons? Answer, Yes. Question, And you also acted as patrolman? Answer, Yes. Question, You patroled the road and made complaints and issued summonses in traffic violation cases? Answer, Yes. Question, I think the best way to go about this would be to take some of the complaints or all of them where you were involved, and question you concerning them. In previous testimony given by you and other officers in Barrington, it developed it wasn't unknown that tickets were changed, tickets were altered, from one charge to another, that becomes very obvious from reading the testimony. Answer, Yes sir. Question, And that as far as you know, whether common or not was tolerated or done in Barrington, particularly in the years 1959, 1960 and part of 1961? Answer, Yes. Question, Which is the area of time we are covering, was it an approved practice to have another

officer change one of your tickets? Answer, It was a practice. Question, You say it was? Answer, Yes it was. The officer, the other officer who wrote the ticket, he would be explained the circumstances, whatever it may be, and authorize the change. Question, If you didn't alter the ticket, it would be a reasonable assumption from what you just said you allowed it and consented to it? Answer, Yes. Question, In what case did you authorize somebody to change your tickets or under what circumstances did you change tickets yourself? Answer, If a friend of mine came to me and wanted me to reduce a summons, I would do so, or if the officer came to me and it was a friend of his, I would do so. Question, A friendship case? Answer, Yes, and if it was a hardship case. Question, What is a hardship case? Answer, Somebody down and out. Question, Money-wise? Answer, Money-wise, yes, or if they can't afford to lose their license. Question, Economic reasons? Answer, if they have to drive for a living. Question, You [fol. 223] would consider a change? Answer, Yes. Question, What about a drunken driving case? Answer, No sir, I wouldn't fool with any drunken driving at all. Question, You know of no cases of drunken driving tempered with in Barrington? Answer, I know of none. Question, Were any rewards accepted by your fellow officers or by yourself? Answer, No sir, I never asked anyone for anything and never expected anything. Question, This particular ticket you feel you didn't make the change, but you consented to it, if it was made? Answer, Yes. Question, You have no recollection of the individual case? Answer, No sir. Question, Now, we have run through quite a few of these, Mr. Murray, where Elwell gets the five dollars and retains the white copy. Answer, Yes sir. Question, Any explanation for that? Answer, It wasn't a common practice to send these out unless the person came in and actually was there and paid it himself. If he paid it himself, he got the copy, but it wasn't a common practice to send out the receipt. Question, If somebody sent in cash

or a check? Answer, They would have to come in and get a receipt. Question, You simply made the entry? Answer, Yes. Question, When would that receipt be made out, if it was a check, when the check cleared. How did you handle that? Answer, I don't understand. Question, Let's say this, Mr. Price here, Richard Price, sent in five dollars by check, would you make out one of those receipts at that point? Answer, Yes sir. Question, When you got the check? Answer, Quite often I got five, six or ten checks in the mail at a time and I would attach them to the summons and put them in the drawer, and when I was going through my book work, I made out the receipts for all of them. Question, At one time? Answer, Yes sir. Question, You would allow enough time for the checks to clear or didn't that enter into your calculations? Answer, No sir. Question, And did you receive much cash through the [fol. 224] mail? Answer, No sir, not the cash, just checks, money orders and whatnot. Question, Bank checks and money orders? Answer, It slips my mind. Question, You never received cash? Answer, Not through the mail, not that I ever recall receiving any through the mail. Question, Now, Mr. Murray, at the beginning of this little inquiry, you said you had altered tickets from time to time? Answer, Yes sir. Question, So far we have run into very few. Would you ever change tickets that were made by other officers? Answer, Yes sir. Question, Now, I have before me a complaint, number 4453, September 15th, 1959, and the offense is R. Wright, a resident of Haddonfield, and he was charged with speeding at the rate of 45 miles an hour in a 25 mile zone, lines have been run through the posed and charged speeds, and in the parking block under prohibited area, there is a cross indicating it was parking in a prohibited area, and your receipt signed by you, both the white copy and the pink copy are here, and there is a receipt for five dollars on a charge of parking, and I have before me a check made by Mr. Wright payable to the order of the Borough of Barrington, 10-14-59, which

is a month later than the date on which the complaint was made, and that is in the amount of fifteen dollars and it's endorsed Borough of Barrington and deposited to the credit of the Borough of Barrington for fifteen dollars, and as I said, the fine was five dollars. Can you explain that? I call your further attention to the fact you dated your receipt January 6, 1960. Answer, I can explain this, sir. Question, You say you can? Answer, I don't know how it happened, but it could very well be this time of the year we were changing over violations clerks. Question, You have no explanation, you can't even speculate how it happened? Answer, All I can say, that is not my signature on the back. That is the only thing I can say about it. Question, You do acknowledge receiving five [fol. 225] dollars? Answer, Yes, I acknowledge that. Question, Now, let's talk about the money end of it then. As violations clerk, you were responsible for these monies, aren't you? Answer, Yes. Question, And marking the entries of receipts? Answer, Yes. Question, And where there are any expenditures, you're authorized to make expenditures? Answer, No. Question, In a drunken driving case, who pays the doctor? Answer, The court does. Question, How? Answer, By check. Question, Judge Eynon would make out a check? Answer, I would make out a check, then the judge would sign it. Question, The account is carried in the municipal court of Barrington and he is the only one authorized to deposit and draw from it? Answer, I would deposit it, and he was the only one who could draw on that account. Question, On these payments made in satisfaction of penalties and monies paid for fines, sometimes you received a check and sometimes you received cash, I assume? Answer, Yes sir. Question, And in cases where the white tickets are still attached to the pink slips, to show the receipt of money, that would indicate somebody mailed the money in and never called for the white slip or his receipt? Answer, Correct as far as I can gather from it, and is what usually

happens. Question, Then you would make the deposit of both cash and check? Answer, Yes. Question, And were you the only one who made up the deposit slips during the time you were violations clerk? Answer, I can't give you a yes or no answer on that. At the beginning, when I took over, I had help. Question, You had help? Answer, Yes, because I wasn't familiar with the book work involved. Question, Was it customary for people who paid fines by check to come in and demand a receipt or would that be an unusual situation? Answer, That would be an unusual situation. Question, They sent their checks in and that [fol. 226] is it? Answer, Yes sir. Question, So I suppose if somebody sent in a fifteen dollar check, like this, and you deposited it and there was a difference of ten dollars, that doesn't appear to be accounted for, that is the situation, you can't deny that. Answer, No. Question, It could be this is not an accusation, somebody could have taken some cash money that was paid for fines and penalties, and extracted that and diverted it from the Borough accounts or did I use words that don't mean too much to you? Answer, I understand. Question, That is possible? Answer, That is possible, but not probable. Question, Not probable because you know the men that work with you, and you know the practice? Answer, Yes. Question, But if there happened to be somebody that wasn't as high principled as the rest of you, it could've happened? Answer, It is possible, but not probable. Question, Is there anyone who checks from time to time to make sure a situation like that couldn't exist? Answer, The Borough auditers. Question, They wouldn't be able to apprehend anybody that might have done that. It is something that is not on the records. Auditers only audit the records, they don't send out any letter to people "Did you send in a check for ten dollars or fifteen dollars." Answer, Not that I know of. Question, They do in some instances? Answer, They may. Question, Then, to the extent the trail could be tapped if you had people who were unscrupulous,

it sometimes permits it, it seems to me this is an illustration of it. I am not asking you to commit yourself, I will withdraw the question. The answer is obviously yes, if you had control of the money and of the checks. Now, Mr. Murray, you weren't compelled to come here? Answer, No. Question, Your counsel advised you you should or could come if you wished? Answer, yes. Question, We haven't coerced you or mistreated you? Answer, No."

[fol. 227] The Witness: That is the end of the statement of Mr. Murray.

Mr. Aiken: Will you go on to the last one, by Mr. Holroyd?

The Witness: This is the statement of James H. Holroyd, taken on Wednesday, December 26, 1962, in the Prosecutor's office, here in the courthouse, Camden, New Jersey, and those present were Sidney Kaplan, Esq., Assistant Prosecutor, Captain Philip J. Large, Detective John Corbin and Fred W. Albert, the Court Reporter.

"James H. Holroyd, sworn, By Mr. Kaplan: Question, Your name is? Answer, James Holroyd. Question, And you are a member of the Barrington Police Force? Answer, Yes. Question, What capacity? Answer, Lieutenant. Question, I assume you are familiar with the purpose of our being here this morning. It is in connection with an order of the Supreme Court directing an investigation into the handling of traffic tickets in Barrington. Answer, Yes, I am. Question, And you have testified before in this matter? Answer, Before Mr. Rigg. Question, The Deputy Attorney General? Answer, Yes. Question, I am going to ask you some questions, but before I do, I want to advise you anything you say must be of course of your own free will, and without any threats, coercion, promises or reward, and I advise you further that you have as has every citizen under the law of New Jersey, the privilege of refusing to disclose any matter which might incriminate you, and further with the full knowledge of this right, if you make any disclosures pertaining to this investigation,

you waive that right of privilege with reference to any phase of the investigation which might involve you. With that understanding, are you ready to proceed? Answer, Yes. Question, For the sake of expediency, and so that this doesn't take up too much time, we have adopted a procedure where we simply ask you questions, and you will [fol. 228] answer them, and generally they pertain to particular tickets, and when I use the term ticket, I mean the complaint and summons and whatever else becomes a part of the assembly. The first ticket that I will ask you about appears to have been altered and they are tickets which you have signed as the complaining witness or the complainant and where the offenses which you originally charged the offender with, has been altered and changed to another type of offense. You will have an opportunity to examine the ticket, and unless you make an objection, it can be assumed you did make the ticket out, if your name appears on it. Answer, Yes. Question, That would also apply to any receipts for penalties and fines received by you? Answer, Yes. Question, It was the practice if anyone were to change a complaint or anything of that sort, he would come to the officer who made the complaint and ask him whether or not it was satisfactory for it to be changed? Answer, Yes. Question, That was the prevailing custom. There may have been exceptions, but on most occasions? Answer, In my cases, and the rest of the men, if any alterations were to be made, they would contact the officer and you would say yes or no. Question, In a case of this sort, even though you didn't make it, and you don't remember who did make it, with the practice you followed would these yellow slips have been such that you would have known at one time how it was disposed of? Answer, No sir, I would not. It would be just a disposition what they had on it, and that would be it. The amount of fine paid would be on the back. I will show you something on the back here. Question, You are pointing to the officer's comments? Answer, Action on the case,

whether it was disposed of through the violations bureau, or court action, and this is on the officer's copy, the yellow copy, and on the case, if it was disposed of through the violations bureau, it would be this, and by the court [fol. 229] action this, and date of disposition, amount of fine, and costs paid. Question, If it was disposed of in the violations bureau, would the nature of the offense, changing it, be on your yellow copy? Answer, Just the amount of the fine and cost. If the ticket was changed to parking, it would be a five dollar fine. Question, You acted as a Deputy Violations Clerk for a time and actually took in some of these fines? Answer, Yes. Question, Did most of these people come in personally and pay the fines or were they received by mail, what is your general experience if there is one you can describe? Answer, You mean on— Question, Getting the money in. Answer, They would come in and it would come in through the mail all sorts of ways. I wasn't the violations clerk, just deputy, and the only reason that we were made deputys was the fact rather than call the violations clerk out at night, or inconvenience the people in coming back, we made all the men in the department Deputy Violations Clerk. Question, There is no complaint, I am trying to find out how you operated. After you gave a ticket, the white copy went where? Answer, The white copy and blue copy went into the violations drawer. Question, This is blue? Answer, Yes, as I explained earlier, this is possibly on radar. Question, I don't mean in this particular case, but suppose court action was called for, what happened to the white and blue? Answer, If a court action was called, the white and blue would go before the judge and the court would write up the disposition on the back of it. Question, And the clerk would have custody of the white and the blue until the court time and not the violations clerk? Answer, the violations clerk and court clerk are one and the same. It was put into a drawer and that is where it stayed until court night. Question, The fact in this particular case,

the offender's copy of the summons had not been returned would indicate she mailed it in? Answer, Or brought it [fol. 230] in. Question, Was it required it be returned? Answer, It was required but a lot of times a person paid a fine and would say he lost it or misplaced it and we would write it down and issue a receipt and tell them to mail it in. Question, Sometimes they came through the mail without the waiver? Answer, Yes, sometimes they just mailed it in. Question, What happened to the white part after the receipt? Answer, That would be filed, after the court's disposition. Question, After the violation was disposed of? Answer, That would be filed in a case docket. Question, You have a pink copy and have a white copy. When you accept a fine, what did you do with the white copy? Answer, The person paid the fine and the white or pink, it didn't matter, you gave them either one. Question, Let us say he paid by mail, what happened to the white copy? Answer, That I couldn't tell you, I couldn't handle anything that came in through the mail. That would be handled through the violations clerk, I don't know what he did. Question, Do you know who the violations clerk was in 1959? Answer, I think it was Officer Elwell. Question, In these particular cases, in some cases where you said you didn't make the changes, but where changes have been made, you do say however, it must have been done with your consent? Answer, It was done with my consent, yes. Question, And further for the record, these yellow copies that were left in your cubbyhole on which the disposition of the case was shown by fine or otherwise, did or did not specify what the charge was? Answer, Yes, it did specify on the front of the summons, it would specify on the front. Question, Look at the blue copy under "Action" on the case. Answer, It would specify what date the fine was paid and if it was altered to parking, it would just have five dollars there. Question, Was the word parking written in there? Answer, No, five dollars. Question, You could tell from the amount of the

[fol. 231] fine what the charge had been changed to? Answer, Yes. Question, And that was the only copy you had with the yellow and that you left in your cubbyhole? Answer, Yes. Question, And the front was known as the police record or duplicate of the summons and complaint, was filed in? Answer, What do you mean? Question, Your yellow copy had all of the times down on the front, such as the blue copy, and if you turned it over and if the fine was five dollars on a speeding charge, you had charged it would show there had been an alteration. Answer, Yes, it would show it was altered. Question, As a matter of fact, these blue copies do show the alterations as well as the first copy, the original. Answer, Yes. Question, Was your yellow copy altered too? Answer, Yes, I assume they were. I didn't take that much notice to them, I would look at the back and see the disposition. If the front copies were altered, the yellow copies were altered. Question, You turned the whole thing in and somebody extracted the yellow copy and put it in your little cubbyhole? Answer, Yes. Question, And you lost track of it for a time? Answer, This would be only a procedure on radar. If I wrote the summons on the street, or in an accident, sometimes I would take my yellow copy off and put it in the cubbyhole, or in a hurry, staple them and put them in the violations cabinet. Question, If a change were made on the original and blue copy, then the alteration might show on your yellow copy if you didn't make the change? Answer, I didn't get your question, give it to me again. Question, You turned in the white copy and blue copy? Answer, Yes. Question, The yellow copy you put in your cubbyhole, you detached the yellow copy. Assume there is a change made in the white and blue. Answer, Then I would make the change on the yellow, I would find out the disposition of the case. Question, You did follow through with each case? Answer, Yes. Question, Even though [fol. 232] your yellow copy would've shown the change? Answer, If I was approached on the ticket, I would say

go ahead and when I looked on the back, it was a five dollar fine, I put five dollars on the ticket and would keep that a while and throw it away. I would keep it a couple of months and throw it away. Question, Here is number 4453, September 15th, 1959, R. Wright, of Haddonfield, you made the complaint, a charge of speeding which was downgraded or changed to parking in prohibited area, and a receipt issued by Officer Murray was for five dollars in satisfaction of a fine or penalty for parking, and the offense has a cancelled check which he has given us, which shows fifteen dollars has been sent in, and not five dollars and the only reason I ask you about this, you have made the complaint and you have said in each case you knew of the downgrading, and knew of the fines paid. Do you have any knowledge of what happened in this case. It becomes as simple as that. We have a cancelled check for fifteen dollars, for a five dollar fine. Is there anything you know about that? Answer, No, if the summons was changed, the officer came to me and I gave the O.K. Question, Right now, we are just interested in the check. Answer, I know it's not my handwriting on the check. Question, Who has charge of these monies as they are received and deposited? Answer, Who has charge, the violations clerk. Question, In other words, the Deputies have nothing to do with that? Answer, Not with the monies. Question, In 1960, who was the violations clerk? Answer, January, 1960, Officer Murray. Question, And Murray accepted this? Answer, Yes. Question, and he was responsible for making the deposit slips? Answer, In 1960, he was. Question, This deposit was made in October, 1959, the check is, and the receipt isn't dated until January 8, 1960, and this was presented for payment on October, 1959, to the bank, so it would've cleared in 1959 and the entry [fol. 233] itself on the receipt wasn't mailed until January 8, 1960. Answer, I don't know anything about that, that was under the violations bureau. All I know is I wrote the summons and the check. I don't know anything about it. The only money we handle is when people would come

into the hall to pay up, and I would issue a receipt and attach the money to the receipt and ticket and put it back in the drawer. Question, Who was the violations clerk of 1959? Answer, officer Elwell, and Officer Murray came in as violations clerk in 1960. Question, Even though the violations clerk himself must've carried the actual deposit to the bank, or didn't the violations clerk always carry the actual deposit to the bank? Answer, No sir. Question, That could be done by any police officer? Answer, Yes sir. Question, Regardless of that fact, the actual making up of the deposit slip and the items on it, that was done by the violations clerk? Answer, Yes. Question, That was his job exclusively? Answer, Yes. Question, And was it the job of the violations clerk to tally or balance the books, so to speak, to make sure there was enough money deposited? Answer, I never bothered to ask the violations clerk how he handled the books. Question, Not how he did it, but was it his responsibility? Answer, Yes, his responsibility was to handle the books and the money. Question, If the books were out of balance, he is the one you would look to find out what had happened? Answer, Yes sir, Mr. Kaplan."

The Witness: That concludes Mr. Holroyd's statement.

* * * * * * *

[fol. 236] The Court: Ladies and gentlemen of the jury, the Court has waited until all of these statements have been read to you, of course, and at this time, I want to, as I promised Counsel I would, draw something to your attention.

We have had as far as each of the defendants are concerned, two statements, one taken in Barrington Police Department by Deputy Attorney General Bud Rigg, and the other taken in the Prosecutor's office by Sidney Kaplan. There is law, of course, as far as the admissability of these statements are concerned. The law applies to this case as follows: This is a conspiracy indictment, and at

the time that these statements were taken, the conspiracy itself, or the alleged conspiracy had been completed. Now, the law of New Jersey is this, if a statement is taken from a co-conspirator before the alleged conspiracy is completed, that statement is admissable against the co-conspirators. In this case, however, all of these statements were taken after the alleged conspiracy was completed. In a situation such as this, therefore, the statements are only admissable against the person who made them, and you are to consider them as far as your consideration of what was read to you by Mr. Garifo, and which the court of course, from an examination of all the statements permitted him to read to you, merely from the standpoint of it being binding only upon the person who made the statements. For example, in Mr. Elwell's statement, he may have in some of the questions mentioned the name of Mr. Murray or Mr. Holroyd. Anything that he says in the statements concerning Mr. Murray or Mr. Holroyd is not binding upon them, but merely binding upon Mr. Elwell. The same is true as far as the other statements are concerned. The statements are only binding upon themselves, even though they mentioned someone else's name. It is not binding [fol. 237] upon the persons mentioned, but only binding upon the person making the statement.

I believe, gentlemen, that covers it as far as the statements are concerned. Now, is there anything else, and may Mr. Garifo be excused?

Mr. Aiken: Yes, Your Honor.

(Witness excused.)

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IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-327-63

Criminal Action On Appeal from Camden County Court.

Sat below:

Anthony C. Mitchell, J. C. C. and a Jury.

STATE OF NEW JERSEY, Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY,
Defendants-Appellants.

Appellants' Appendix

[fol. 253] EUGENE D. ELWELL, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mr. Elwell, I am going to ask you some questions, will you speak up so that the entire jury can hear you?
A. Yes sir.
Q. What is your full name?
A. Eugene D. Elwell.
Q. And where do you reside?
A. 207 Gloucester Pike, Barrington, New Jersey.
Q. Are you married?
A. I am, sir.
Q. Do you have a family?
A. I do, five children.

Q. Now, were you a police officer in the Borough of Barrington in 1959?

A. I was, sir.

Q. How long have you been a police officer in the Borough of Barrington?

A. Eleven years last February.

Q. And you are still a member of the police force, is that correct?

A. I am, sir.

Q. And what were your duties chiefly as a police officer in the Borough of Barrington?

A. Routine duties of police, patrol, take care of calls, complaints.

Q. And in those routine duties, from time to time did you also have occasion to stop motor vehicles for the violation of a traffic act?

A. I did, sir.

Q. But in addition to stopping motorists, you had your regular duties as a policeman, is that correct?

A. That is right.

Q. You were not a special policeman, is that correct?

A. No sir, regular police officer.

Q. So that therefore your duties would include any violation of the law, no matter how high or how low the offenses might be, is that correct?

A. Correct.

Q. Now, in the year of 1959, were you also acting as a violations clerk of the Borough of Barrington?

A. I was.

Q. Can you tell this jury if you recall when you were [fol. 254] first appointed or asked to act as a violations clerk?

A. I was appointed in the first of January, 1959.

Q. Do you remember or recall who was the magistrate at that time?

A. Peter J. Coruzzi.

Q. Were you appointed by the magistrate or were you appointed by the town of the Borough of Barrington?

A. Mayor and counsel approval.

Q. And will you tell the jury what was the procedure and custom at that time of the officers acting as violations clerk for the Borough of Barrington?

A. We had an alternating system where a different officer was appointed each year to be violations clerk and court clerk.

Q. And would you say that the year of 1959 was your year, you might say, to act as a violations clerk?

A. Yes it was, sir.

Q. Now, when you speak of acting as a violations clerk, can you tell us how often the courts were held in the Borough of Barrington?

A. We have court twice a month, the second and fourth weeks.

Q. The second and fourth weeks?

A. Yes.

Q. Were they evening courts or just in the day?

A. Every evening, seven p. m. at night.

Q. Now, on those evenings, that you had in court, did you also work during the day as an officer?

A. Yes, I did.

Q. Now, when you were appointed as a violations clerk, did you receive any extra compensation for performing that service?

A. I did sir, three hundred dollars?

Q. Three hundred dollars?

A. Yes.

Q. You are speaking of three hundred dollars for a year?

A. For the year, yes.

Q. Now, were you told by anyone what some of your duties would be as a violations clerk?

A. Just by the violations clerk who was in office before me, related some of the information to me.

[fol. 255] Q. Who was in office prior to the time that you became violations clerk?

A. Robert Rehmer.

Q. Is he an officer?

A. He is, sir.

Q. Incidentally, before we go any further, how many officers were there on the force in the Borough of Barrington in 1959?

A. I think we had eight.

Q. How many?

A. Eight all together.

Q. Now, you say Mr. Rehmer, Officer Rehmer, was a violations clerk right before you came?

A. That is right, in 1958.

Q. Before you became a violations clerk, did you at any time act as a deputy?

A. Yes, before and after '59, I was deputy.

Q. Would I be correct in saying that the custom and procedure was that each officer was designated as a Deputy Clerk at that time?

A. That is correct.

Q. No matter who the violations clerk or clerks was?

A. That is correct.

Q. Was the violations clerk and the clerk of the court the same?

A. Both the same, yes.

Q. The same person acted the same way, is that correct?

A. Yes sir.

Q. Now again I ask you, did you also work on the same day that you would serve that evening as a violations clerk?

A. Yes, I worked that day or at night, depending on what my regular shift would be.

Q. Were there times that you stopped a motorist for a motor vehicle violation, and then later sit in court in that case would come up as a violations clerk?

A. Yes, sir.

Q. And that was the custom or procedure in those days, isn't that correct?

A. That is correct.

Q. Now, can you again tell us what some of your specific duties as you learned them from your predecessor concerning your duties as a violations clerk?

A. Well, accept fines, make out receipts, take care of the books and records in the court.

[fol. 256] Q. Now, did it involve much work as far as book work is concerned?

A. It was a tremendous amount of work, yes.

Q. Were you able as a violations clerk to perform your duties just one night or two nights during the month when they held court?

A. No.

Q. Did it necessitate you taking some of these books out from time to time to your home or to other places around the court house to do your work?

A. Yes, I used to quite often take them home to work on them at night.

Q. What were some of the books or records that you kept, what were they called, what kind of books were they?

A. I handled court docket, criminal docket, and municipal court cash book, plus the other reports we had to make out to the state and county, the mayor and council, traffic control docket, control sheets, blue cards we had to make out to the state, plus our receipts and our regular summonses.

Q. Did you ever have a course of any kind in bookkeeping?

A. No, I never did sir.

Q. Was any particular type of course necessary at the time that they appointed you violations clerk?

A. Not at that time, sir.

Q. Did they ask you if you had any special requirements for that position?

A. No.

Q. Was it a position which you sought or which was given to you by necessity of being a police officer?

A. It was just given to me under the rotating system we had there.

Q. In other words, you didn't seek that position?

A. No.

Q. Now, to your knowledge, was the books of the Borough of Barrington audited in 1959?

A. They were sir, yes.

[fol. 257] Q. And do you know the results of the audit of the book of 1959 while you were acting as the violations clerk of the court?

A. I know they were all approved by the auditor.

Q. Now, are you acquainted and familiar with the two gentlemen sitting in here today, the two defendants?

A. I am, sir.

Q. And did you and the two defendants here work on the same shift at all times?

A. No sir, we alternated our shifts around.

Q. Were there some times that you would be on one shift and these gentlemen were on a different shift?

A. Yes.

Q. And could you tell us whether that would happen quite often?

A. We changed every week, I might see one one week, and I'd not see them again for another three or four weeks.

Q. Did you at any time have any type of understanding with these two gentlemen to alter any tickets or to change any tickets which were given by you or any other officer in the Borough of Barrington?

A. No, no definite understanding.

Q. Were you in a position to know every day what each one of these gentlemen were doing?

A. No I was not.

Q. And were they in any position to know what your duties were, what you were doing?

A. No sir.

Q. Now, I direct your attention specifically to the indictment and the overt act under this indictment of a matter which happened September 15th, 1959, you were a policeman at that time, is that correct?

A. I was, sir.

Q. And you were the violations clerk at that time?

A. I was.

Q. Now, can you enlighten us about a person by the name of Robert Wright, who was charged with exceeding the speed limit allowed in a zone, can you tell us anything

that you might know about this matter which is indexed [fol. 258] as complaint 4453, issued out of the municipal court of the Borough of Barrington?

A. Well, at that time in September or whatever the date that you referred to, I don't remember this case at all at that time.

Q. Now, did you stop that motorist or arrest that motorist for any offense?

A. Not to my knowledge, I didn't, no.

Q. Now, would you know whether or not you endorsed a check made payable by this gentlemen for fifteen dollars in the Borough of Barrington?

A. I did, yes.

Q. And I show you a check which was admitted into evidence, this check is marked in evidence as S-6 and ask you to whom is this check payable?

A. This check is payable to the Borough of Barrington.

Q. Who signed it?

A. Robert Wright.

Q. Now, will you look at the back or give us the date on the first?

A. October 14th, 1959.

Q. Now, will you look at the back of that check, is there an endorsement?

A. There is sir.

Q. And read it to the jury, how it is endorsed.

A. It is endorsed "Borough of Barrington."

Q. Is it your handwriting?

A. It appears to be mine, yes.

Q. And did you have authority at that time to endorse all checks in the manner in which you endorsed this check?

A. I did as violations clerk.

Q. And did you endorse all checks in the same way in which you endorsed this check?

A. I did.

Q. Did you deposit this check?

A. Yes, I did.

Q. And does it show it on there, that the check was deposited in the bank?

A. It shows the bank statement, yes sir.

Q. What is the amount of that check?

A. The check is for fifteen dollars, sir.

Q. Now, how often would you make deposits in the bank?

A. Well, depending on the volume of work and how often [fol. 259] I worked on the books, maybe once, twice or three times a month.

Q. Was there any rules to your knowledge or did anyone tell you as to when you should deposit the money or how often you should deposit the money?

A. No sir, no rule.

Q. When you did deposit the money, did you make out two slips, one for the bank and one for the Borough?

A. We kept a duplicate of the deposit slip.

Q. And all those duplicates still refer to the Borough of Barrington for which you made?

A. They are still in the custody of the court.

Q. They are duplicates of the accounts you have looked up and checked in the records for the purpose of doing the books?

A. Correct, sir.

Q. In the year 1959, was there anything different about that year as compared with the other years in respect to the number of traffic violations?

A. We had a very large volume of traffic cases in 1959, yes.

Q. Could you explain the reasons for it?

A. Well, in 1959, we had radar and we had put it in operation.

Q. Was that the first year that you had radar?

A. It was the end of '58 and the beginning of '59 when we first started to put it in.

Q. Did it continue throughout the year of '59, radar?

A. It did, sir.

Q. Did you have radar in operation in 1960?

A. In the very beginning of the year, but then our radar was out of order, it was broken, and we didn't use it most of the year.

Q. Mr. Elwell, I show you here a municipal court report, and ask you first if you recognize this report and where it came from?

A. Yes, this is a copy of the amount of the summons and fines accepted into the court. This was taken from our regular court report made to the mayor and council which was made every month.

[fol. 260] Q. Now, what does it show for the year 1959 in respect to the amount of cases heard and also to the amount of fines that were produced that year?

A. In 1959, the total cases for the year was 1,126. The total cases and costs received was $19,145.50.

Q. Now, does this include all the motor vehicle offenses which were handled by the violations clerk as well as by the court itself?

A. Yes.

Q. Now, would you look at 1960 and tell us how many cases were heard in 1960.

A. 1960, the total cases for the year was 575, total fines and costs for the year was $10,019.00.

Q. Did you have to process all of these cases which occurred in 1959?

A. I did sir, yes.

Q. So that the year of 1959, there was a total of 11 some hundred cases that were processed by you as violations clerk in addition to your regular duties as a police officer, is that correct?

A. That is correct, sir.

Q. Now, returning again to the indictment at the present time, with reference to this overt act, which is charged in the indictment, to your knowledge therefore, you did endorse this check, is that correct?

A. I did, sir.

Q. To your knowledge, you did deposit that check, is that correct?

A. Correct, sir.

Q. Now, was anything else that you know about this particular matter besides receiving the check in the usual course of your job and also endorsing it and depositing it?

A. Well, I can elaborate on it, I told you what I think it was. I had the check there with my other money, it was endorsed and deposited. As far as the written ticket is concerned, I don't remember seeing that ticket at all at that time, and I don't recall that ticket up until I was going out of the office as violations clerk in December.

Q. Well, the entry was made in the book, were you still [fol. 261] violations clerk?

A. No, I was not, sir.

Q. So that the entry that was made in the book which showed five dollars, was not made by you, isn't that correct?

A. That is correct.

Q. And you were not the violations clerk at that time?

A. No I was not.

Q. But you were the violations clerk when that check was issued, received to your office, by someone?

A. Yes, right.

Q. Now, you personally did not receive this check from the gentleman that made out the check?

A. No, I did not.

Q. Will you tell the jury what the custom and procedure was when you gave a ticket or any officer gave a motorist or a ticket which was similar to speeding or speeding?

A. Officer would write the summons out, give the defendant his hard copy, the complaint, and the rest of the ticket, the complaint, the blue copy, the court records and was all put into a cubbyhole in the office or in the violations cabinet, and just left laying there until appearance on the court date. If that ticket was paid before time, before court, which people have the right to do, the money or fine, what-

ever it be, or check would be put with the ticket by a paper clip. That would remain in a drawer until I would have an opportunity to work on the books.

Q. Now, were there certain violations such as speeding and other violations which the violations clerk had authority to handle without a disposition made by the court itself?

A. Yes.

Q. What were some of those violations besides speeding?

A. Well, most of your violations, careless driving and the rest of them with the exception of drunken driving or hit and run, but most of the others we could handle at the violations bureau.

Q. Now, I show you tickets which were marked in evidence, in reference to a Mr. Wright, and is marked in evi-
[fol. 262] dence as S-2, and ask you if these tickets would represent the usual type of tickets that would be given to a motorist if he was charged with speeding.

A. Yes, this is our uniform ticket.

Q. Or any other violation, is that correct?

A. Any violation at all, motor vehicle.

Q. Now, the duty of the officer stopping the motorist to mark on that ticket the violation which he believes the gentleman or lady has violated or done?

A. Yes, it is marked right here.

Q. Now, in back of those tickets, does it say anything in there with respect to pleading, to the pleading of guilty if the person wants to plead guilty to an offense?

A. Yes, at the bottom of the ticket there is appearance, plea and waiver section, where a person could just sign and pay their fine at the violations bureau or mail it in.

Q. So that if you or any other officer stopped a motorist for speeding, would it be explained to the motorist or would the motorist ask you whether or not he or she could send in the money in the form of paying a fine?

A. Yes, he would either ask us or we would explain it to him. Also inform them there is a telephone on the back here, the violations bureau, where they could call in.

Q. And if you would have stopped a motorist today, and charged him with speeding, would you mark on that ticket the date of it, of the next hearing of court?

A. I didn't hear your question.

Q. Would you mark the ticket the next date of court hearing?

A. Yes.

Q. Usually that would be two or three weeks hence from the time that you would give the ticket?

A. It could be at least two weeks, yes.

Q. Now, during those two weeks, the motorist could send in his money or check or whatnot to the Borough Hall, is that correct?

A. That is correct.

[fol. 263] Q. Or could bring it in personally, is that correct?

A. Correct.

Q. After the motorist brought it in during the day, there would be someone present to whom he or she would leave that money with?

A. There generally would be, yes.

Q. And did that person be a violations clerk?

A. I would say in most cases it would be one of the deputys.

Q. And were there others that worked in there besides a deputy or violations clerk during the day?

A. Well, we had people that worked in the tax office, that they could bring it in and give it to.

Q. I believe that gentleman that testified, Mr. Wright, if I am correct in my recollection, said that he brought his in on the day that he was supposed to appear in court that evening, and gave the check to someone in the office. Did the girls or anyone there have the authority to receive that money, to your knowledge?

A. To my knowledge, they did, yes.

Q. Was there monies received from time to time by other people besides yourself when you were the violations clerk?

A. Yes.

Q. And when you came into the hall to sit as a violations clerk on the night that the court was in process, is that where the checks or money would be turned over to you?

A. Well, it would all be left in a drawer until I worked on the books.

Q. And would you look at the money that was in the drawer prior to the time that you come there to sit as a violations clerk of that evening?

A. No, sir, only if I have to go there to get change out, to make change or for other fines or something, that is about the only time.

Q. In other words, would I be correct in saying that you appeared as a violations clerk once in two weeks, for the court hearing, and that would be the time when you would look in your drawers to see what monies or checks there are [fol. 264] that came in?

A. Not that night in particular, only when we worked on the books was when I pulled all the money, tickets and everything out and worked on them.

Q. Did you get the various notations attached to the checks or money order of any attached matters?

A. That is correct, sir.

Q. And you as a violations clerk, could follow what was attached to this card?

A. Correct, sir.

Q. And enter into your books in the manner which was set forth, correct?

A. Correct.

Q. Did you at any time during the time that you acted as the violations clerk or as a police officer, make any agreement with any other officers to violate any of the laws of the traffic laws of the state of New Jersey?

A. I did not sir.

Q. Did you ever have any type of understanding between you and any other officers to violate the laws of the state of New Jersey in reference to the traffic laws?

A. No, sir.

Q. Did you at any time to your knowledge, violate the laws of the state of New Jersey, concerning the traffic laws?

A. I did not, sir.

Q. You were asked back in 1961 to answer some questions, were you not?

A. I was, sir.

Q. And some of these questions and answers were read to the jury today, is that correct?

A. Correct, sir.

Q. And they were part of an entire statement of facts, questions which were asked of you, and answers that were given by you, both to Mr. Rigg and to Mr. Kaplan, is that correct?

A. Correct, sir.

Q. Did you at any time refuse to give answers to any of these questions which were propounded to you?

A. No sir, I did not.

Q. You were charged in this particular indictment, Mr. Elwell, together with the other two defendants that was [fol. 265] January 1, 1959, and up to and including June the 29th, 1961, that you did commit the crime of conspiracy, that they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state, in that they unlawfully, knowingly, and corruptly, agreed to dispose of certain traffic summonses commonly designated as operating offenses. Did you ever make such agreements with any officers?

A. No I did not, sir.

Q. Did you at any time unlawfully and knowingly and corruptly agree to dispose of traffic offenses?

A. No sir.

Q. Were there sometimes changes that you noticed on some tickets that came into your possession as a violations clerk?

A. Yes there was, yes.

Q. And did you explain all of these changes when you were asked these various questions, both by the prosecutor's office, as well as by the Deputy Attorney General?

A. I explained them to the best of my knowledge, yes sir.

Q. Did you ever receive any instructions from the court itself what your duties were as violations clerk?

A. No sir, I did not.

The Court: Gentlemen, it is four o'clock, time to quit for the day. Ladies and gentlemen of the jury, please return at quarter of ten tomorrow morning, room 326. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

[fol. 266]

June 4, 1963
Camden, New Jersey

Before: Hon. Anthony C. Mitchell, J.C.C.

Appearances: (As hereinbefore noted)

The Court: Now, I think Mr. Elwell was on the stand. He may resume the stand. You have already been sworn.

EUGENE D. ELWELL, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mr. Elwell, the year of 1959, how many officers were on the force in Barrington?

A. We had eight of them I believe.

Q. And during that year do I understand that you yourself were also acting as a police officer?

A. Yes sir.

Q. And you had various shifts during that year?

A. We work about six or seven different shifts, our department.

Q. Now, during that year, did you have occasion to take your books home while you were the violations clerk?

A. Yes I did, quite often.

Q. Did you have occasion to have someone in your house to help you to do your book work in reference to your duties as a violations clerk?

A. I did, my wife helped me, yes.

Q. And was that help rendered to you quite often during [fol. 267] the year 1959?

A. Yes.

Q. Now, Mr. Elwell, you were questioned in reference to some tickets first by Deputy Attorney General Mr. Rigg, do you recall that?

A. Yes.

Q. And would you say that you were questioned in reference to approximately a hundred tickets or so?

A. It was at least that amount or more.

Q. And those tickets in reference to tickets issued by various members of the police department during the year of 1959?

A. Yes.

Q. And would they have been tickets issued by any or all of the eight members of the police force during that year?

A. That is correct, yes sir.

Q. And did you in all these cases that you were questioned, give your explanation of anything that you might know in reference to that particular ticket which you were asked about?

A. To the best of my knowledge, yes.

Q. How, were there tickets that you acted upon as a police officer where you gave a motorist a ticket charging him with some violation, and then later changing that of your own accord?

A. Yes I did.

Q. Can you tell this jury what were some of the instances that motivated you to change that particular ticket or tickets?

A. Well, I had one case where I issued a summons like the man was running a bulldozer or something on the White Horse Pike, and I issued him a summons for running a vehicle without rubber wheels, and then afterwards I realized that the part he was running on was a closed section of the pike they were working on the highway at the time, and I dismissed the ticket myself, because I didn't feel it should have been issued in the first place, and I had another case—

Q. Before you go on to the other case, did you dismiss that ticket?

A. I dismissed it, yes.

[fol. 268] Q. And did you dismiss it because you felt that you were wrong in the beginning in the violation with which you charged him?

A. That is correct, sir.

Q. Can you say or would you say whether or not the judge knew later on of the fact that you dismissed that ticket of your own accord?

A. To my knowledge he did, yes sir.

Q. Did you ever receive any instructions from the judge of your court or the judge of the Supreme Court or the administrative director that you could not dismiss an action wherein a violation clerk could handle?

A. No, I was not.

Q. And therefore when you dismissed a matter, you dismissed it because of the fact that a mistake was made by you personally in respect to that ticket?

A. That is correct.

Q. Now, what other instances, do you know of an occasion, and incidentally before you answer that, this one that you are talking about which you just mentioned is one of the matters which is in this questionaire which you were asked about the ticket?

A. Yes, I was questioned about that ticket.

Q. Now, what are some of the other instances that you had?

A. Well, I had another dismissal I made in '59 where one night while I was driving the police car, a person made a left hand turn in front of me to go down the side street, almost causing an accident. I went after her, gave her a ticket for careless driving, and then afterwards I was thinking it over and in fact I had another officer in the car with me, and I was of the opinion myself that I was going too fast myself, and the almost near accident was more my fault than it was this other party's, so I dismissed that ticket.

Q. And were you questioned about that ticket?

A. I was sir, yes.

Q. And is that in this book where Deputy Attorney Gen-
[fol. 269] eral Mr. Rigg asked you questions in reference to certain tickets?

A. It is, yes.

Q. And is that listed as one of the tickets?

A. Yes it is.

Q. Now, will you mention some of the other instances that you had occasion to change tickets?

A. Well, I had occasion on a few on radar, sir.

Q. Would you explain to the jury how this radar works and how the tickets are given out and what happens to it?

A. Well, when we operate a radar, it was generally with two or three officers working on it. One operated the radar machine which has the clock and that clocks the speed while it is the other officer or two officers were to wave down the car and write out summonses. There was different occasions where I would stop a car, yell back to the other officer, ask him what the speed was, he would tell me, I'd write out the ticket, and on occasion where we had more than one car stopped at a time, the wrong speed would be written down on the summons and he would yell back a correction in it, I'd scratch it out and change it to the right speed.

Q. Then in any of these matters which you were questioned on by Deputy Attorney General or the Prosecutor's

office, did any of these tickets have any violation concerning drunken driving?

A. None sir, none at all.

Q. Did they have any violations but those which you, as a violations clerk, could take care of and were permitted to take care of by law?

A. I was permitted to take care of all of them, yes sir.

Q. And would most of them you say refer to speeding?

A. Speeding, maybe a red light or a careless driving, all minor offenses of the motor vehicle code.

Q. And were there many of these tickets that you were questioned about that you had no knowledge or information at all concerning them?

A. Yes, quite a few on there, yes.

[fol. 270] Q. Now, did you at any time receive any monies from anyone for changing any tickets?

A. Definitely not, no sir.

Q. Did you ever receive even one dollar bill during your whole course as a police officer for any change or changes you may have made on a ticket?

A. No sir, definitely not.

Q. Were you ever instructed by anyone that you had no authority to change a ticket?

A. No I was not.

Q. Did you believe it was within your discretion as a violations officer to change a ticket if necessary under the circumstances either by mistake or that you were wrong or that the officer was wrong from the beginning?

A. Yes, I was under that assumption since it was well-known we didn't try to hide them, when we made a change, it was very obvious changes that were made. Anybody at all looking at the ticket could see it was changed.

Q. Was there ever any understanding or agreement between you and these two young men here, that you were going to change tickets or which ticket you were going to change, or reasons for it or that you conspired to do anything like that?

A. No sir, definitely not.

Q. Did you ever have any meeting of the minds to do anything unlawful or wrong in respect to these tickets?

A. No sir.

Q. Did you, in your opinion, ever believe that you were doing something contrary to the law when you yourself changed a ticket by reason of some mistake?

A. No, I was doing just a normal thing, I was condoned by the court and everything else at the time.

Q. And were those tickets available in the Borough Hall for anyone to see, for the other officers to see, for the public to see, and everyone else?

A. They were right in the office, yes sir.

Q. Were any of those tickets ever taken home or hidden [fol. 271] or put away someplace?

A. No sir.

Q. Were there, to your knowledge, times that someone would come down from the administrator's office to check as to how the court was operated as a general checkup?

A. Every two years they send a man down to check our court.

Q. So that they were checked, the violations, traffic violations, the books, and whatnot were checked prior to 1959, is that correct?

A. In 1958 a man was down to check all our tickets and all our books and records.

Q. And that was from Trenton?

A. Yes, from the administrative office of the courts.

Q. Now, again I want to ask you this question, I think I asked you this before, you are acting primarily as a police officer, is that correct?

A. Yes, that is correct.

Q. And your duties were the same as the duties of any police officer during the year of 1959, is that correct?

A. That is correct, sir.

Q. Which would have included the apprehension of anyone for the violation of any laws of the state of New Jersey?

A. That is correct, yes.

Q. And did you as an officer, have many many occasions during the year 1959 to exercise that right and that privilege, and that obligation as an officer for other offenses besides traffic violations?

A. I did sir, yes.

Q. Now, would that have included robbery, larceny, burglary, rape and all the various crimes which are committed in any municipality?

A. That is correct, sir,

Q. And you were actively engaged as an officer at all times in those matters, is that correct?

A. I was, sir.

Q. And enforcing the law?

A. Correct, sir.

Q. That is all.

[fol. 272] Cross-examination.

By Mr. Gerry:

Q. Mr. Elwell, how would you characterize the volume of business of the violations clerk during the year 1959 in which you served in that capacity?

A. In 1959 it was the largest volume we ever had in the violations bureau, as far as our court or department is concerned.

Q. Now, do I understand correctly that this was in some way due to the acquisition of a radar machine?

A. That's correct, sir, we used it all year.

Q. And do I understand correctly that the heavy volume which you experienced in the violations bureau during the year 1959, continued over into the early part of 1960 and then ceased thereafter?

A. It did, I don't remember the exact date it stopped, but we had it in the beginning of 1960.

Q. Now, Mr. Elwell, there has been, I believe, read into evidence earlier in the form of a question by Mr. Kaplan and directed to you on any given summons or complaint

that if you as the arresting officer, had not made a change on the ticket—

Mr. Aiken: Your Honor, may we have the question he is referring to.

Q. If Your Honor please, I will ask for a little assistance in finding that particular reference, and I will go on with another question rather than hold the court up. Now, Officer Elwell, you know I assume by now that the charge against you as well as against the other defendants in this matter is that you participated in a conspiracy to obstruct justice.

A. That is correct, sir.

Q. And now, I would like to inquire of you the exact presence or existence of the elements of any secret agreement between any two or more of you in the matter before the court and jury. Now, let's look into the secretive part. [fol. 273] Of the summonses of which you may have made observations, where there were some changes or alterations, were these quite apparent on the faces of the summonses?

A. Very apparent, yes.

Q. In most cases, they were just rough cross outs, weren't they?

A. That's right, scratched out by ball point pen.

Q. And were there not also cases where the cross out was done, or did not obliterate the numbers or writings underneath?

A. That is right, you could still read them under some of them, yes sir.

Q. Did you personally ever come across a summons which any ink eradicator or anything of that nature had been used?

A. No sir.

Q. Would there have been any particular skill acquired or possessed by the person observing that ticket to see on its face there had been an alteration?

A. It was quite obvious, anybody could see it was done.

Q. Now, do I understand correctly also that it was one of your obligations as a violations clerk thereafter by Officer Murray, when he assumed the job in 1960, that you would make monthly reports to the mayor and counsel as to the operation of the traffic bureau?

A. Yes sir, we did at the end of each month.

Q. Was this periodically and regularly done?

A. It was.

Q. Were there, to your knowledge, any omissions, failures to, at the end of any month, to submit such reports to the mayor and counsel?

A. No, there was one definitely made every month, a complete report.

Q. Now, in addition to the monthly reports that covered the operation of the traffic bureau, violations bureau, were there additionally quarterly reports that were sent to the administrative director of the courts of the state of New Jersey?

A. He sent a monthly and a quarterly report to the state and a monthly report to the county.

[fol. 274] Q. A monthly report to the county and what would this cover generally?

A. The monthly report to the county would be a report on all county tickets. in other words speeding or anything that involved the county were as the monthly report to the state involved the state summonses, turnpike speeding and all them, was reported into the state.

Q. So that in addition to the quarterly report to the administrative director's office, there was a monthly report to the state, and a similarly regular report to the county, is that correct?

A. And one to the mayor and council also.

Q. So that we have then periodic reports of the functioning of the violations bureau to the mayor and council, to the county of Camden and to the office of the administrative director and to the State of New Jersey?

A. Yes sir.

Q. To your knowledge during the period that you served in 1959 as the violations clerk, and during the period early in 1960, when I believe you assisted Officer Murray, the new violations clerk, were there any omissions of the filing of these reports?

A. There was not, no sir.

Q. Now, in addition to the reports that were submitted, which you have described for us, was there ever any audit by a competent and independent accountant or accounting firm of the books of the violations bureau?

A. Yes, they were audited, all the books and records.

Q. And would this audit include the cash book?

A. Including everything in the municipal court, tickets, cash book, docket book.

Q. Docket book, tickets, receipts, everything, all papers and instruments incidental to the operation of the violations bureau?

A. Yes sir, everything.

Q. Now, do you know who the auditors were?

A. William Foley. Actually, the company he is with, [fol. 275] I don't know. Actually, the name is William Foley.

Q. Now, was this a local accounting firm, if you know, or an out of state accounting firm?

A. Out of state, I believe from Philadelphia.

Q. And to your knowledge is he the gentleman that you mentioned or the accounting firm any way connected indirectly or directly involved in the day to day operation of the violations bureau apart from the audit?

A. No, they are not, not to my knowledge.

Q. Do you know of your own knowledge what happens to the audit report?

A. I imagine it goes into the state, I am not sure. To my knowledge, I wouldn't know what happened to it.

Q. Now, in addition to the audit which was made by an independent auditing firm, were there any other spot checks or spot audits made?

A. Administrative office of the court spot checked our records.

Q. Now, you recall the most recent date prior to 1959 when this was done by a representative of the administrative office?

A. It was some time in 1958, the man was down, the exact month I don't remember, and then again in 1960.

Q. And again in 1960.

A. Yes.

Q. Would that be near the beginning of 1960, or the middle or end of 1960, if you recall?

A. In March or April, I am not quite sure on the date.

Q. Now, when the representative of the administrative director's office came down to it and made a spot check, would violations clerk have any prior warning at the time he was going to show up and ask for the request to have all the books provided and spot checked?

A. No, he would just walk right in and demand them right then.

Q. And this would be unannounced spot checks, is that correct, sir?

A. That is right.

Q. And is it fair to assume that both you as violations clerk in 1959 and Officer Murray as violations clerk of [fol. 276] 1960, and most of the members of the police department were aware that these spot checks had been made?

A. Yes, we knew it, yes sir.

Q. Now, as a result of these many reports that you have described for us which dealt in detail with the operation of the violations bureau, as a result of any audits which may have been made or as a result of the spot checks unannounced that were made by the representative of the administrative office of the courts, are you aware of any objections as to the operation of the violations bureau which were expressed to you by any of those sources?

A. There was none at all, that I know of.

Q. Would this also be true of the early part of 1960 when you were assisting Officer Murray?

A. There is no remarks about the way it was run, no sir.

Q. Now, Officer Elwell, when you first assumed the duties of violations clerk in Barrington in the beginning of 1959, were you assisted by the outgoing violations clerk?

A. I was for the first month or so or overlapping into the second month, yes.

Q. So that for a couple of months you also had the assistance of the outgoing violations clerk, is that correct?

A. I did sir, yes.

Q. Now, with the exception of the assistance that he rendered to you, and incidentally, do you recall his name?

A. Officer Rehmer, Sergeant Rehmer.

Q. Is he still presently a member of the Barrington police force?

A. He is sir, yes.

Q. Now, with the exception of the instructions and directions that you received for the first couple of months on the job, did you receive any instructions or information relating to your duties and the nature and limitation of your authority as a violations clerk?

A. No, I did not.

Q. Did the Judge of the court at that time beginning of 1959 or the judge, by judge I mean magistrate, here [fol. 277] in Barrington, did the magistrate there in Barrington at any time assist or instruct you in how you were to handle the books for the violations bureau and what limitations of your authority was?

A. No, he never did.

Q. Now, during the year 1959, did any representative of the administrative director of the courts of the State of New Jersey ever contact you and instruct you as to the nature and extent of your duties and obligations and limitations upon your authority as violations clerk?

A. No sir.

Q. Did you receive any pamphlets, any books, any statute books, any resume of the statutory law or the regulations and rules of the state of New Jersey relating to your obligation and your duties and the limitations upon your authority in that office?

A. No sir, I never did.

Q. Now, Officer Elwell, pursuant to the custom of the outgoing violations clerk in giving assistance and instructions to the new fellow that is coming in to that job, did you follow this procedure also when Officer Murray took over in January of 1960?

A. I did, yes.

Q. Now, if you will, can you describe for us the mechanics of the assistance that you would give to—I mean did you actually work with him on the first few occasions when he had to actually tote up everything and make his entry?

A. I did, for the first month of January, and in the beginning of February I helped him.

Q. And is it fair to assume that the basic thing that the violations clerk has to learn was what all these books were about, the cash book, docket book, receipt book, and how to make entries into these things?

A. That is correct, sir, yes.

Q. Now, when you assisted him, did you split up the function in some customary way?

A. Yes, in the beginning when we first started the first time we worked on the books, I showed him how to make [fol. 278] out the receipts and all, how they were done, and the next entry would be in the cash book or rather the docket book, I don't know if it was the first time we worked on them or the second time, I just read off the name and the violations and the amount of the fine, and all, and he entered it in the book so he learned how to do that.

Q. Now, he would then, when you assisted him, have the cash books, the docket book, and the receipt book in front of him, is that correct?

A. That is correct.

Q. And you would have, as I understand it, the tickets or the summonses and the money and cash, whatever it was, attached to each one?

A. That is correct, yes.

Q. Then would these be all in a pile?

A. Yes.

Q. And where did these all come from, where would you get them?

A. From the drawer of the violations cabinet.

Q. Was this the same drawer which was accessible to all the various members of the police department?

A. Yes it was.

Q. And was it in this drawer that by custom and practice, anyone or any officer who received in his capacity as a violations deputy clerk, any fines and waivers across the desk, would put the money and the receipt and so forth?

A. Yes, they all go in this one drawer.

Q. Now, when you took out this pile of receipts or summonses and attached monies, checks, or whatever it happened to be involved, you would then as I understand it, read off to Officer Murray the entry that he was to make in the docket book, is that correct?

A. Yes.

Q. And also the entry that he was to make in the cash book, how much cash was involved in any particular case?

A. That is right.

Q. And would you thereafter instruct him as to the person to whom the receipt should be made out and in [fol. 279] what amount?

A. I would, yes.

Q. And as you went through the ticket, each ticket, let us take the ticket that was on the top of the pile which came to you first, after you had dictated it to Officer Murray, these entries in the various books that he was to make, what would you do with the money?

A. It would be put into a pile, and a ticket would be put into a pile.

Q. And then presumably when you got down to the bottom of whatever accumulation that you had as tickets, you then have another pile of disposed of tickets which had been recorded, is that correct?

A. Yes, that is correct.

Q. And you also had a pile of cash or checks?

A. That is right.

Q. What did you do with the pile of summonses that had already been dictated and disposed of in the sense that they had been recorded in the books by Officer Murray?

A. We had put a rubber band around them and stick them in another file drawer for the year.

Q. Was this file for all of the old matters that were now completed?

A. Yes, all of them, yes sir.

Q. Now, you have your pile of cash and checks, did you also instruct Officer Murray about how to make up a deposit slip?

A. Yes I did.

Q. Then you would, I suppose, tote up your cash and your checks to see what the total amount would be for the deposit, is that the idea?

A. We would add up the money and the checks, and also the amounts on all the receipts, and it would balance out and then the deposit slip would be made up.

Q. And Officer Murray then would make up, under your supervision, the deposit slip and those monies would then be deposited to the account of the Borough of Barrington?

A. That is right sir, yes, to the municipal court account.

Q. What?

A. To the municipal court account, not to the Borough [fol. 280] of Barrington.

Q. Now, after you placed the completed summons pile back into this drawer in which was reserved for that purpose, would there've been from your knowledge of the duties of the violations clerk, would there've been any reason for the violations clerk thereafter to go back in this dead drawer and file through all of these summonses?

A. No, sir.

Q. Now, with reference to receipts, would these tickets have receipts on them when they went back into the moth balls?

A. Yes, they had their receipts attached to them, yes.

Q. Do I assume correctly that after you have dictated the amount to Officer Murray and put on the receipt, he

would then hand it back to you and you would then put it with its proper summons and you went along?

A. That is right, yes.

Q. Now officer, I believe in January the 8th, 1960, which would be approximately seven days or eight days after Officer Murray took over, one of the matters, one of the summonses which were apparently docketed, receipted, and so forth at that time, was the summons which had been issued to Mr. Wright, which the prosecution here has named in the indictment as the one allegedly in which you and one of the others were in some conspiracy to alter, is that correct?

A. That is correct, yes.

Q. Now apparently at that time then, you had dictated to him, to Officer Murray, that the receipt for about five dollars should be made out of this particular charge.

A. I did, yes.

Q. And then as I understand it, correct me if I am wrong, he would hand that receipt back to you and put it with the ticket, and it would go into the pile of disposed tickets, is that correct?

A. That is correct.

Q. Now, under the prevailing system which you have described, did Officer Murray actually see the ticket, the [fol. 281] particular summons involved, or whether or not there was a check or cash attached to it or what amount, you were dictating those things to him, were you not?

A. That is right, he didn't see them because I had them all in front of me. He was sitting down on the other end of the table.

Q. When you took over in the beginning of 1959, and were assisted by Officer Rehmer, who had presided you as violations clerk, did I understand correctly that you had no accounting or bookkeeping training of any kind?

A. No I did not.

Q. To your knowledge, had Officer Murray at any time, had any experience in bookkeeping or accounting?

A. Not to my knowledge, he didn't.

Q. How long have you been on the force, Officer Elwell?

A. Up till now, eleven years.

Q. Do that you would have been on the Barrington police force during the years preceding the spot check by the administrative director in 1958?

A. I went on in 1952, I joined the department.

Q. Now, can you tell us whether the same practices, dealing with the handling of traffic offenses in the violations court of the Borough of Barrington, existed prior to that spot check in 1958?

A. Right from the time I first joined the department, it was the same way.

Q. Always been the same way?

A. Yes.

Q. So that the administrative director it represents in the spot check in some early part of 1959 was at that time examining the same type of practice that existed up to 1959, in the early part of 1960?

A. That is correct, yes sir.

Q. Now, Officer Elwell, you described for us the fact that there was a drawer in the violations cabinet, is that what you call it, into which all summonses and the whole pack, summonses and complaints and so forth, and the receipts and money and so forth, were all put, is that correct?

A. That is correct, yes.

[fol. 282] Q. Now, was this drawer that you described, was it under lock and key?

A. No it wasn't.

Q. To your knowledge, was it required to be so?

A. Not to my knowledge, no.

Q. Would any member of the police force have ready access to that drawer at any time?

A. They would, yes sir.

Q. I may have misunderstood some of the earlier testimony, but I think that there was a suggestion that on some occasions girls, or personnel in the tax department, may have taken fines, am I correct in that or is that incorrect?

A. Mrs. Oberparleiter, who is Deputy Tax Clerk with her job in the tax office, if I am not mistaken, is also a Deputy Violations Clerk and she was a violations clerk at one time a few years back, but she can accept and receive fines too.

Q. Anyone from the tax office, would they have access to the violations drawer?

A. Yes, they had access to it, yes sir.

Q. There is no question, is there officer, that under the law that prevailed in 1959 and 1960, that the members of the police department of Barrington as Deputy Violations Clerk, had the authority to accept fines over the desk when violators would come in and want to pay them in that fashion?

A. They all had the authority, yes sir.

Q. And had they the authority also, to issue receipts when they took monies over the desk?

A. They did, yes.

Q. Had they authority to accept back the hard copy with the plea and the waiver signed by the violator on the reverse side?

A. They did, yes.

Q. Is this practice still prevailing?

A. Yes, we—

Mr. Aiken: What practice. I don't understand the question.

Q. I am talking about the practice of Deputy Violations [fol. 283] Clerk accepting the fines in the police department.

A. Yes, we are still Deputy Violations Clerk.

The Court: Wait a minute now, let me get something straight there, wasn't there some testimony in this case that this whole business of violations clerk and alike changed some time subsequent to the crime alleged in this, and that now an officer cannot be a violations clerk. When you can't be a violations clerk, how can you be a Deputy Violations Clerk. Does anybody know the answer?

Mr. Gerry: That is the answer, I believe, Your Honor, that is my conception of the rule.

The Court: That is already alleged.

The Witness: It has been changed, there has been a change come down on this.

The Court: I thought you said that it was whether or not it was at the present time.

Mr. Gerry: It was, sir.

The Court: Well, as a practical matter, for the benefit of the jury, it does not exist.

Q. So that officer, at the present time and since such time as the system was changed, no officer of the Barrington Police Force are taking fines that go to the violations bureau, is that correct?

A. That is correct, yes sir.

The Court: Incidentally, I sometimes forget and leave the jury sitting there a long while. If any of you at any time feel the necessity for a recess, raise your hand and I will call it. See, I call them for lawyers and for myself, but sometimes I forget the jury, so if at any time you feel the necessity for a recess, raise your hand and I will call a recess.

Q. Officer, physically, how would these tickets and a [fol. 284] couple of these papers be attached when they were, when fines were taken over the desk, and thereafter put in the violations drawer?

A. All of the tickets and the fines and receipts and all would be attached by a paper clip and put in the drawer.

Q. From your experience, were there any occasions when the clips came off?

A. Yes, quite often.

Q. Were they then stapled?

A. They were paper clips, the money was paper clipped to the tickets.

Q. From your experience, was there ever any occasion when those paper clips came off the money and checks and got mixed up or attached to the other summonses and complaints?

A. Quite often they came off them, and quite often I had to take money off different tickets and at times make changes and things like that in court.

Q. Now, Officer, I direct your attention to the various papers which comprise the uniform traffic ticket, which is I understand was employed in Barrington as well as every other police department. Do I understand correctly that that comprised of a hard back summons which was given to the violator by the arresting officer and also a white complaint, a blue or green copy of that complaint, and a yellow copy of that complaint, is that so?

A. That is correct.

Q. Have you left anything out of the traffic ticket?

A. No, there is actually four sheets.

Q. Now, directing your attention to the yellow copy, what function did this yellow copy perform in your understanding?

A. That was the officer's copy, for the officer that issued the summons, that was his own personal copy for his reference and all.

Q. And the officer might retain that yellow copy when he arrested someone and gave him a ticket?

A. Sometimes he kept it and sometimes he's leave it attached with the ticket. There was no set procedure on one way or another.

[fol. 285] Q. And this was not a public record that was kept on file permanently in the violations bureau, but it was simply for the convenience of the arresting officer to remind him what was on the ticket?

A. Yes.

Q. Would this yellow copy be one of the things that would help him if the matter went to court so that he could testify from it and refresh his memory?

A. That is right, he would use it for the reference.

Q. Now, it is my understanding, Mr. Elwell, that the Wright summons was issued during the course of radar. Now, what was the yellow copy usually retained by the officer while working it on the radar or would most often

that yellow copy simply be attached to the whole package and returned to the violations bureau?

A. I think they were all just left attached together.

Q. Now, let us assume that in any given case the violater comes into the police department, and he goes to the violation clerk, or any of the deputy officers, pays his fine, signs his waiver and so on, and the matter is disposed of without going into court. In that particular instance, when you as the violations clerk would come to that period where you are taking all the tickets, and transposing them into your book, making up your deposits and so on, would you on all occasions return the yellow copy to the officer or was it a customary practice not to do that on some cases?

A. Not on all occasions, depending on how busy I was. Sometimes I just leave them attached to the tickets, sometimes I return them.

Q. And were sometimes these tickets simply destroyed?

A. Yes, they were, yes.

Q. And in destroying these, you were not destroying public records of any kind, is that so?

A. No I wasn't.

Mr. Aiken: I object.

The Court: Sustain the objection. The jury will disregard that of not destroying public records.

[fol. 286] Q. Now, if the particular matter had been disposed of over the desk, where you have made your entries, and the yellow copy was destroyed, how would the arresting officer learn what ultimately had happened to that case?

A. Well, if he was interested and wanted to go back to find out, he could always check the docket book, he would find it in there.

Q. He could go back and check the docket book at any time to find out what the disposition was?

A. Yes, it was always available.

Q. Now, if however he had no personal interest in the case, he did not know the violater, no one had approached him, didn't know anything about it, and this was one of

the large number of radar summonses which he had issued, would he have any way of recalling this particular matter if the yellow copy had been destroyed or kept?

A. No, he would not, no sir.

Q. And if it had not gone to court, of course he would have no need for the yellow copy to testify or anything like that?

A. That is right, it was all disposed of in the violations bureau, he was done.

Q. If the arresting officer, whoever he may be, had kept an independent record of all the tickets that he had issued and to whom the dates were and so on, I assume then that he would have some remainder of it to follow up on, if he wished to, is that correct?

A. Yes, if he kept a record, yes.

Q. Was it customary so far as you know for police officers in the Borough of Barrington to keep in independent records out on the road of all the tickets they issued?

A. No, we kept no records at all for ourselves.

Q. Now, was it a practice, Officer Elwell, for the violations clerk, during the course of his recording of the summons and whatnot that had been taken over the desk from violaters, was it the custom for the violations clerk, in order to make sure that the arresting officer knew any- [fol. 287] thing at all about this, and had given his O.K. to the contact the arresting officer independently?

A. I have to ask you to repeat that again. Perhaps I misunderstood you.

Q. Is it the violations clerk, when you had a ticket in your pile, that you were about to record, and make up your deposit slip on, if there had been an alteration on that summons or a change in some degree, would you as the violations clerk and this is the only connection you have with the ticket under this hypothetical, would you go back to the arresting officer to be sure that he had given his O.K. to this change?

A. No sir, I would not, no.

Q. You wouldn't have any occasion to, would you?

A. No sir.

Q. Now, Officer Elwell, in a radar case, for example, payment had been made over the desk and let us assume also that some change had been made on this particular ticket, and that in during the course of the recording of this ticket, the yellow copy was destroyed or not returned to the arresting officer, and let us assume again that the arresting officer which was apparently not the practice, did not keep any independent book or ledger of the tickets that have been issued—

Mr. Aiken: I have to object.

The Court: Don't answer this until the court has had an opportunity to rule. Go ahead.

Q. Now, Officer Elwell, I believe that you have testified that on some occasion, particularly with radar, the yellow copy, the arresting officers copy were not returned to the officer by the violations clerk during the course of the disposition of the matter, is that correct?

A. That is correct, yes.

Q. Now, let us assume that the particular ticket involved some change, which was evident on its face from that form [fol. 288] in which it was when the ticket was issued, some changing made, and also that the arresting officer according to normal practice as you have testified, did not keep any independent record of the tickets that he had issued, and that also that the arresting officer had no particular interest or knowledge of the offender or of the matter, would there be any way in which the arresting officer if this case didn't go to court, would know what the disposition of that matter was?

Mr. Aiken: I withdraw my objection.

The Court: You may answer.

The Witness: There would be no way unless he went to the docket book to check it himself.

Q. Officer Elwell, do you know who followed Officer Murray as violations clerk out there in Barrington?

A. There was Officer Griffner, I believe.

Q. Did he receive any training in the course of his duties?

A. Not to my knowledge.

The Court: Now, we are down in 1961, is that correct?

Mr. Gerry: Yes, this would be 1961.

The Witness: I think they did start a school up for violations clerk, I believe, in '61.

Q. Do you know who started that school for violations clerk?

A. I think it was the administrative office of the courts in, I know Officer Griffner attended. I believe it was in Trenton.

Q. Was there any such school of instruction by the officers of the administrative director of the courts during 1959 when you served as violations clerk?

A. No.

Q. Or 1960 when Officer Murray did?

A. No, he started the first one in 1961, it was a two week course you went to.

[fol. 289] Q. That is all, officer, thank you.

The Court: All right, at this time we will take a short recess. Spectators remain seated until the jury leaves. You may leave.

(Recess taken.)

The Court: All right, Mr. Elwell, you may resume the stand. You may proceed, Mr. Aiken.

Cross examination.

By Mr. Aiken:

Q. Mr. Elwell, in September of '59, were you aware that as violations clerk you had the obligation to account for all monies received by you?

A. I was aware of that, yes.

Q. And were you also aware of that in the case of a speeding violation, the fine was to go to the county and the cost to the municipality, depending on where the speeding violation was?

A. Yes.

Q. All right, some cases went to the state, didn't it?

A. Yes.

Q. In the case involving Mr. Wright, where was the fine to have gone?

A. I imagine in that, I know that it was a county road, the fine would go into the county.

Q. So that out of the fifteen dollars that you received as a violations clerk from Mr. Wright, you knew that you were to account for fifteen dollars, did you not?

A. Yes sir.

Q. And that ten of it was to go to the county treasurer and five to the custodian of funds of the municipality, did you not?

A. At that time all the money was distributed to where it was supposed to go.

Q. You knew that, didn't you?

A. Yes.

Q. Now, did you do that in relation to the fifteen dollars received from Mr. Wright?

A. The check was deposited in October, and the money was distributed as it should have been. Now, as far as Mr. [fol. 290] Wright is concerned, I don't know.

Q. Are you telling me that fifteen dollars had been received from Mr. Wright and was accounted for properly?

A. It was deposited in the bank.

Q. Will you show me where it shows in the docket that that money was accounted for the way you testified it should have been?

A. If I am not mistaken, the ticket was entered into the docket book or cash book into January so there would be nothing in here to show it in October or September.

Q. At any time, Mr. Elwell, did you account for that money properly the way you knew it should have been accounted for?

A. The only thing I had knowledge of in September or October is the check itself, which was deposited in the bank. Mr. Wright's ticket, I did not even have knowledge of in September or October.

Q. Now, Mr. Elwell, will you show me in the book where that fifteen dollars was distributed and accounted for in the manner you testified it should have been accounted for?

A. Well, that would be in your cash book, not in your docket book. The docket book, there was nothing entered in September or October under the name of Mr. Wright, although the check was deposited in October.

Q. Yes, it was deposited, but it wasn't recorded, was it?

A. No, not at that time.

Q. And it should've been recorded.

A. I didn't have the ticket at that time, sir.

Q. Please answer my question. It should have been recorded, shouldn't it?

Mr. Sherman: I object to that.

The Court: Overrule the objection. The question is perfectly proper. He asked why wasn't it recorded. He was violations clerk. Go ahead and answer the question.

A. It should've been, but it wasn't at the time.

[fol. 291] Q. Now, will you show me in the book where you distributed, or where it shows ten dollars of the Wright check went to the county treasurer, and five dollars to the municipal custodian of funds?

A. There is nothing in the cash book distributing it that way.

Q. That is right. You do not properly account for those funds, did you?

A. The check was deposited and the money was distributed, but not under the name of Mr. Wright.

Q. Please tell me whether or not you properly accounted for the funds you received and deposited for Mr. Wright.

Mr. Sherman: I object to that.

The Court: He has already said that as far as he was concerned, he was violations clerk and knew that this went here and this went there. Now, he is being asked a simple question. He says I did it right, and Aiken said well, did you do this, did you know this. The plain question is did you properly account for the money. I think the question is perfectly proper, I will allow it. You may answer it.

The Witness: The money was accounted for, deposited, and distributed, the check, yes sir.

Q. Properly?

A. To my knowledge at the time, yes.

Q. Will you show me where in the book it shows it was.

A. The book doesn't have anything under Mr. Wright's name in September or October, no.

Q. There isn't anything there until January, is there?

A. That is correct, sir.

Q. And that shows what?

A. That shows that it was marked down here on the 8th of January, Mr. Wright, parking, five dollar fine.

Q. And to whom does that show that five dollars went?

A. It went to the Borough of Barrington.

Q. Does it show going to the county treasurer?

A. No, it doesn't.

[fol. 292] Q. No, it doesn't. So that that money is not properly accounted for, is it Mr. Elwell?

A. Mr. Wright's check was accounted for when I deposited it.

Q. Please answer my question.

A. I am sorry, I cannot answer that, sir. To my knowledge the check was deposited and accounted for at that time.

Q. It is a very simple question, Mr. Elwell. Did you properly account for the fifteen dollars you had gotten from Mr. Wright?

A. There was no accounting made until January on his ticket.

Q. And the accounting that shows under the date January the 8th is not a proper one and you know it, don't you?

Mr. Sherman: I object to that.

The Court: Sustain the objection. He has already said that in his opinion it is. It will be for the jury to decide whether it is or not. Now, let's not belabor the point. You've asked him, he's already said that in his opinion it was accounted for or I won't even go that far, he has answered the question. Whether he has answered it directly or not, or whether it is or it is not a proper answer will be for the jury to decide. Now, we have asked him three or four different times, we've gotten the various types of answers, and it is up to the jury to pass upon it as far as credibility and the answer is concerned. Move on, next question.

Q. Now, you have testified I think, Mr. Elwell, that there was some eleven hundred tickets issued in 1959?

A. That is correct, sir, yes.

Q. And that this was a heavy load?

A. Very heavy, yes.

Q. Now, am I incorrect when I say that that amounts to about 25 tickets a week?

A. We never broke it down that way, our amount varied each week, sometimes we could have over a hundred.

[fol. 293] Q. On the average, it amounts to about 23 a week?

A. Well, if you average it down, sometimes we have a hundred tickets a week or a day.

Q. It would average to 23 a week, wouldn't it?

A. If you would average it down, I would imagine yes.

Q. And on a daily basis, it's about three tickets a day, isn't it?

Mr. Sherman: I object to this.

The Court: Overrule the objection. He is saying an average. You may cross examine as far as some weeks being more than others. The question is proper and I so rule.

Q. And there were occasions, were they not, when you were violations clerk that you performed some of the duties of violations clerk in your regular tour of duties as a policeman?

A. You mean out on the road, or—

Q. Anytime, anywhere, Mr. Elwell.

The Court: No, you should strain that out as far as bringing up all of the books and everything else. Obviously he can't do that under the rule, but I think you should specify if you mean when he came back to it, while he was still a policeman, could he do this, could he work on the books. Now, did you do that?

The Witness: Not while I was on duty, no sir.

Q. And you did receive extra pay for this job, did you not?

A. I received three hundred dollars for the year.

Q. Yes, and so the system was to switch the job around from year to year so that each officer would have an opportunity to obtain the extra pay, isn't that right?

A. That is correct.

[fol. 294] Q. Did you ever make any complaint that the job was too much for you in 1959, and if so, whom did you complain to?

A. I complained to the chief, I think it was in June or July that I wanted to get out of the job that I couldn't leave it until September. I was refused.

Q. Did you ever tell the judge you complained about it?

A. No, I didn't.

The Court: By judge, you mean of course the local magistrate?

Q. Yes, the magistrate. Did you ever talk to the Borough auditors, this Mr. Foley that you mentioned, or what was that name?

A. Yes sir.

Q. Did you ever talk to him about the proper way to make the entries in the book?

A. No sir.

Q. You never talked about it to the judge?

A. No sir.

Q. You never talked to the chief about it?

A. No sir.

Q. You didn't ask anybody except Robert Rehmer, the prior clerk?

A. That is correct, Robert Rehmer.

Q. And you didn't ask any questions or instructions from anybody else?

A. I was never offered them.

Q. Now, didn't you, during that period, have available to you the statutes or the rules of the court relating to the municipal court?

A. They had quite a few law books and different law books on the offices.

Q. Didn't you have the rules of court relating to the municipal court?

A. It was probably in there with the rest of our books.

Q. Yes, and you referred to them occasionally, didn't you?

A. I never did, no sir.

Q. You never did?

A. I never had the occasion to.

Q. No question ever arose that you couldn't answer that you had to refer to the book for?

A. I always referred to the judge if I had any problem. [fol. 295] The book was, it belonged to the court.

Q. Now, I think you said that your books were audited and there was never any complaint made about them, and they were always in good order, is that right?

A. That is correct.

Q. Have you got the cash book there in front of you?

A. Yes I have.

Q. Will you refer to that please, there is no reference to any check received from Robert Wright on October of 1959, is there?

A. There is no special marking made for any check at any time. We don't mark it as being a check or cash or anything.

Q. Well, as I see it, Mr. Elwell—

A. Mr. Wright's name doesn't appear in October of 1959 in the cash book, no.

Q. There is no entry showing that you received and deposited fifteen dollars from Mr. Wright, is there?

A. Not from Mr. Wright, no.

Q. And each of a receipt is itemized as to ticket and name and offense, is it not?

A. That is correct.

Q. Now, can you tell from looking at this check that this check marked S-6, when it was deposited?

A. The Camden Trust stamp on here is October the 16th.

Q. Yes, and did you make a deposit on October the 16th?

A. It was either the 15th or the 16th, I don't know when they stamped it.

Q. Can you tell from looking at the book?

A. Yes, the deposit was made on the 16th.

Q. That is right. That is the same date that this check was deposited, isn't it?

A. Correct.

Q. Now, as far as you know, this check is included in that amount, isn't it?

A. Correct.

Q. What is that amount you deposited on the 16th?

A. One thousand two hundred nine dollars.

Q. And was that all cash or was it all checks or was it partly cash and partly checks?

A. Well, I have no way of telling by the cash book, but I imagine it was checks and cash both, it normally was.

[fol. 296] Q. So, if you deposited a check that doesn't show in the book?

A. That is correct.

Q. You would have deposited fifteen dollars more than shows in the book, wouldn't you?

A. No, the book and the deposit is always balanced out.

Q. That is right, they do balance out, but it doesn't show the Wright check, does it?

A. The check was deposited this time.

Q. That is right, so that the Wright check included in that deposit, it must be some other receipt that was not deposited, isn't that right?

A. I am afraid I don't follow you on that question, Prosecutor.

Q. Well, all of the receipts from November that you made, that you received from November 30th, the date of the last deposit prior to October the 16th, are listed in the book, are they not?

A. They are, yes.

Q. That's right, except the Wright one.

A. Wright.

The Court: Let's get something straight here for the jury, when they are listed in the book, are they listed under a certain name so that when the whole thing is added up and it amounts to a thousand dollars or whatever—

The Witness: That is correct, yes sir.

The Court: All right, and you deposited the check on that day and as I understand it Wright's name is on the book as shown a deposit of money that you received from Wright on that case, is that correct?

The Witness: That is correct, sir.

The Court: All right, continue.

Q. So that the deposit should have been fifteen dollars more than was shown in the book, shouldn't it?

A. Not necessarily, if that check was deposited against one of the other names on the book.

Q. Well now, you have accounted for all the monies on [fol. 297] all the others in the book, haven't you?

A. Ten and five, fifteen dollars on each one, it could've been this check—

Q. Well, as far as the record shows that you prepared, you have accounted for all the monies on all the other receipts between the dates of those two deposits, haven't you?

A. Yes.

Q. So far as your deposit of October the 16th, if everything was deposited that is shown in the book plus the Wright check, it should be fifteen dollars more than is shown on the book, isn't that so?

A. Not necessarily, no.

Q. Well, will you explain to me, Mr. Elwell,—

A. I am trying to, sir as I said, that check was deposited on another ticket. In other words, marked on another summons here, and by mistake Wright's ticket was not here, Wright's ticket I know definitely was lost at that time. That it why it wasn't here at this time.

Q. Well, are you telling me that on one of those tickets that I listed from October 1st to October 16th, you did not deposit the money you show you deposited?

A. That was all deposited, yes.

Q. All right, it was all deposited. And include the check, the Wright check in the amount of fifteen dollars, and it amounted to twelve hundred nine dollars, didn't it?

A. Yes.

Q. So that you had to include the Wright check in that deposit, that had to be fifteen dollars reduced from some other receipt, isn't there?

A. No sir, no.

Q. Well, are you telling me then that you didn't make the deposit for the receipts shown in the book?

A. All the receipts shown in the book and the total deposited was deposited on October the 16th.

Q. That's right, all the receipts in the book total what?

A. Total the amount of twelve hundred nine dollars.

[fol. 298] Q. Right, but the Wright check isn't shown, so that would increase the deposit to twelve twenty-four dollars, wouldn't it?

A. The Wright check is possibly shown in there on another summons.

Q. Well, show me where it is shown in your cash book.

A. I can't show you, I can't pick it out of all these tickets.

Q. Unless it's not—

A. It definitely is sir, it had to be.

Q. Well, you show me where you accounted for it in the cash book.

A. I couldn't show you because Mr. Wright's ticket wasn't found until January the 1st or the first part of January.

Q. I am talking about the check.

A. There is no way of showing which is the check and which is the cash from the cash book. It is not marked that way.

Q. Well, you say that Mr. Wright's ticket wasn't found until January 1st.

A. Or until the first part of January, the end of December.

Q. Now, tell us how it happened to be found.

A. Well, I was changing, and officer Murray was taking over violations, I cleaned out the cabinet, all our books and records and all, and the old correspondence so it would be all new when he took over, and when I took out the file drawer that we kept our tickets in and the other papers, I found some papers and Mr. Wright's ticket was there with a five dollar bill on it. I put this here with the rest of our tickets we had in the drawer at that time.

Q. And did Mr. Murray notice this?

A. No, not at the time he didn't, no.

Q. Did you tell him?

A. No.

Q. Didn't he raise any questions about this old ticket?

A. I don't even think he even seen the ticket.

Q. Did he raise any question about it?

A. No, he did not.

Q. The date of the offense appears on the docket in [fol. 299] his handwriting, doesn't it?

A. That is correct.

Q. And didn't he raise any question about it?

A. No, sir, there was no question to be raised.

Q. Now, Mr. Elwell, you say there was a five dollar bill attached to this ticket that you mysteriously found in the drawer around January 1st?

A. There was a five dollar bill attached to the ticket I found.

Q. Where did the five dollar bill come from?

A. I don't know sir, it was attached to the ticket.

The Court: Are you talking about the Wright ticket now?

The Witness: Yes, we have monies or checks attached to the ticket.

Q. Well now, Mr. Wright came to the station on October the 14th to pay his ticket, which he did, by check of fifteen dollars. Wasn't that check attached to his hard copy?

A. I don't know, I didn't receive the check off of him sir.

Q. Well, you deposited it, you must've seen it between the time it was received and the time you deposited it.

A. I deposited the check, I seen the check, but I did not see the ticket.

Q. You deposited the check without seeing the ticket to which it related?

A. It was on the ticket, apparently, but it was Wright's ticket, I know it was Wright's ticket definitely.

Q. And you don't know where the five dollars came from that was attached to the ticket when you say you found it around January the 1st.

A. It probably came from the ticket that Mr. Wright's check was on.

Q. It came from what?

A. The ticket that Mr. Wright's check was on most likely. There was a mix up in the check, and the check got attached to the wrong ticket, and the five dollars got attached to the Wright ticket and it was found in January.

Q. Well, as far as you know, there are not any other [fol. 300] mistakes relating to any other tickets, are there?

A. Not that I know of.

Q. And if that was true, there would be?

A. Not necessarily.

Q. But your books balanced out.

A. That is right. If it was a fifteen dollar check on the ticket, it would be marked as fifteen dollars.

Q. Then if you received some cash for another ticket, you would give a receipt, or make up a receipt for that cash, wouldn't you?

A. Unless the ticket was going to be changed or something, or there was a mistake or something in it, yes.

Q. But if the receipt was made up for the actual cash, it was received from some other ticket, the auditors who would check that receipt against that book, wouldn't they?

A. Yes, and—

Q. And if five dollars from that cash were attributed to the Wright ticket, they would find that there was five dollars left and there should have been in connection with the other ticket, wouldn't they?

A. Apparently there was only five dollars on that ticket that Wright's check was on.

Q. That is what you said before. I am trying to find out how that could be.

A. That ticket was a parking ticket, not a parking ticket, but had been changed to parking.

Q. Yes, if somebody else had paid say fifteen dollars in cash for speeding, and it was changed to parking, and five dollars only attached to it, to the ticket—

A. I didn't say that, sir.

Q. What?

A. That wasn't my answer, sir. My answer was that there was a five dollars on the ticket, apparently on the ticket, that was marked parking and it got mixed up with Wright's ticket or that ticket got mixed up with that ticket and that is my only conclusion to it.

Q. Well now, when you found the five dollars on the [fol. 301] Wright ticket, you knew it had been changed, didn't you?

A. Yes I did.

Q. And you knew that it had been issued by Officer Holroyd, didn't you?

A. Yes I did.

Q. And you knew that in order for it to be changed, Holroyd had to consent, didn't you?

A. Not necessarily.

Q. Not necessarily?

A. I didn't know if he consented to it or not.

Q. Well, didn't you tell Mr. Rigg that he had to consent if there was to be a change?

A. I said as far as the Wright ticket, I don't know whether he did or not, I don't know what happened on the Wright ticket.

Q. Didn't you tell Mr. Rigg that in order for a ticket to be changed, the issuing officer had to consent?

A. I think I did in my statement, yes.

Q. So that if that is true then Holroyd had to consent to the change, didn't he?

Mr. Sherman: I object, if Your Honor please. He is being asked whether he knows whether he did or not. He can be asked what the custom is, or what he did, but he can't answer what this gentleman did.

The Court: I will permit it. He is subject to cross examination. The same rule will then prevail when he is on the stand as when he is talking as when he is in the statement because he is subject to cross examination on the stand whereas a piece of paper he is not. You may answer it. Do you understand the question?

The Witness: I think I do, Your Honor, but he didn't consent to me, I didn't ask him for the change, so I don't know.

The Court: No, what the Prosecutor is saying to you is this, that in your statement apparently his contention is that you said no ticket could be changed or in effect no ticket could be changed unless the officer who gave the [fol. 302] ticket consented to the change. Now, what he is saying to you, you said that in your statement, now on the stand, is that true, did Holroyd as far as you know, consent to the change on this particular ticket?

The Witness: It is possible, yes sir.

Q. And it was Officer Murray's responsibility, was it not, to put the proper entries in the book relating to the Wright ticket on January the 1st?

Mr. Sherman: I object, I think that is for the other gentleman—

The Court: I will permit it. He knows the duties of a violations clerk. He says he did. At least to some degree, and as far as he is concerned, Officer Murray was at that time. This was in January. Officer Murray succeeded him as violations clerk. I will permit it, it is proper.

The Witness: In January, in the beginning of February, Officer Murray entered in the book what I read off to him from the tickets.

Q. Well, please answer my question, Mr. Elwell.

The Court: Well, in effect he has said the same thing, the violations clerk is the fellow that actually physically puts it in the book.

The Witness: Yes.

The Court: Murray was violations clerk?

The Witness: Yes.

The Court: So it was Murray's obligation to put it in the book?

The Witness: Yes.

The Court: All right, go ahead.

Q. So that with this five dollar bill that was recorded on January the 8th, by Officer Murray, there was in effect twenty dollars received in connection with the Wright ticket, wasn't there?

A. I am afraid I don't know what you mean on that one, [fol. 303] Prosecutor.

The Court: Well, the court doesn't understand that either.

Q. Well, you received fifteen dollars in October from Wright?

The Court: Without getting this thing any more confused, if it is incorrect, you correct me. He got a check for fifteen dollars, somebody had a check for fifteen dollars from Wright, and then he says he has entered them up in the books and so on and so forth and the only explanation he can give is that five dollars that belonged to somebody else was by mistake put on Wright's ticket, and Wright's fifteen dollars was charged to somebody else's ticket, or something to that effect, is that what your testimony is?

The Witness: That's right, Your Honor.

The Court: Then his general theory is that when the ticket was found, the five dollars which belonged to somebody else's ticket was on Wright's ticket, is that your explanation?

The Witness: That is right.

The Court: All right.

Q. Now, have you made any effort at any time since the issuance of the ticket, to Murray, to determine where the mistake you are talking about occurred?

Mr. Sherman: I object. First of all, it wasn't Murray. I think he is referring to the Wright ticket.

The Court: All right, let's get it straightened out. The ticket is Wright. Murray is an officer, so Murray has no ticket.

Q. Have you made any effort since the Wright ticket was issued to determine where the so-called mistake was made?

A. I didn't know there was a mistake made until I was [fol. 304] questioned by the Prosecutor Kaplan, and ever since that time, he has had possession of all the tickets so I would have no way of checking it.

Q. You didn't ask to see the books or check them out, did you?

A. They were state property or impounded by the state.

Q. Did you ask?

A. No, I did not, I did not ask.

Q. You didn't ask anybody, did you?

A. No, I did not.

Q. You didn't ask the auditors?

A. No I did not.

The Court: The answer is he did not ask anybody. Now, why do we have to go all through the auditers. The auditers are included in anybody.

Q. Now, there isn't any way that the auditers would have of knowing that you received the Wright ticket, and deposited it on October the 16th, 1959, is there, unless there was an entry in the book, or a receipt made up?

A. Not that I know of, there wouldn't be any way.

Q. No, they couldn't be checked, could they?

A. Not to my knowledge.

Q. And as far as they could tell, the only monies received in connection with the Wright ticket was the five dollars that was entered under January the 18th, 1960, isn't that right?

A. That is correct.

Q. So that whether they found any discrepancy in relation to the Wright ticket is meaningless, isn't it?

A. That is true.

Q. Now, do I understand you to say that there was no system in the police headquarters for locking up this cash or these checks and so forth that came in connection with traffic tickets?

A. That is true, it was left open at all times. It wasn't locked.

Q. Open?

A. There were two metal doors on the cabinet, they were not locked.

Q. Anybody could go in there?

A. That is correct, yes.

[fol. 305] Q. And there was no record made, separate record of what cash or checks went into that drawer?

A. No sir, only the cash book when it was processed, that is all.

Q. Now, you said something about notations being attached to a card in relation to the ticket. I didn't understand what you meant. Can you explain that?

A. I don't remember my saying myself that there was. I think I was asked a question, I said yes, sometimes there was something marked or a ticket was supposed to be changed or something, there was a mistake on the ticket or it should be voided out, and the officer made a mistake.

Q. Well now, Mr. Elwell, in that connection you know that there was a proper procedure set up, don't you, to take care of mistakes made in connection with tickets?

A. As far as the ticket being voided, there was, I know that.

Q. Yes, and there was that procedure?

A. Well, if the ticket was damaged or voided out for any reason, it would be marked void and a report would be made out on it.

Q. Yes, and for any reason you issued a ticket, in error, or something like that, you would mark that in what is called a traffic control docket receipt, wouldn't you?

A. Traffic control sheet, yes.

Q. And issue a new ticket, if necessary?

A. That is correct, yes.

Q. But you didn't do that in connection with the two cases you mentioned, did you. Weren't you questioned by

one of the defense counsel about two cases where you said that you dismissed the ticket?

A. That is right, I have dismissed two of them.

Q. And you also testified in connection with one, I believe, that you told the judge about it, didn't you?

A. Afterward, I think yes I did speak to the judge about a mistake, I am not sure but I think I did speak to him afterward.

[fol. 306] Q. You are not sure on that?

A. To my knowledge I did, I think I mentioned it to him.

Q. Do you remember being asked about that ticket by Mr. Rigg?

A. Yes, I think it was by Mr. Rigg and Mr. Kaplan both.

Q. Now, this case was the bulldozer case, Mr. Elwell, do you remember being asked by Mr. Rigg, "Did you accomplish this with the advice, consent, or approval of the judge, and answering it I don't think so, sir, I am not sure on that point."

A. That is right, I didn't ask him before I marked it dismissed if I could do it or anything.

Q. As a matter of fact, you never told the judge that you changed any ticket, did you?

A. I never went directly to him and told him, no.

Q. And outside of the police department itself, you never told anybody else, did you?

A. Not to my knowledge, no.

Q. And you never called these changes and anything else in relation to these downgradings to the attention of these two people you mentioned that came down from the office of the administrative director of the courts?

A. They were aware of it, yes.

Q. Did you call it to their attention?

A. It was called to their attention in their own investigation.

Q. Did you call it to their attention?

A. No, I did not personally myself.

Q. Now, were you present when they were there on both occasions you mentioned?

A. I was present on one occasion.

Mr. Sherman: I'm going to object to this because I don't know which we're talking of. We are talking about the present investigation by the Deputy Attorney General of the Prosecutor's office, or we are talking about—

Q. You testified that somebody from the administrative [fol. 307] Director's office came down in 1958 and made a spot check, did you not?

A. Yes.

Q. Now, were you present when that person came down?

A. Not in 1958, no sir.

Q. And do you know who that person was?

A. I think the name was Aiello or something like that, I am not sure of his name.

Q. So that if you weren't present and you don't know what was called to his attention, do you?

A. Well, I wasn't there to see what was called to his attention, no sir.

Q. You didn't hear, either.

A. I wasn't there to hear it, I heard afterwards, yes.

Q. Were you present in the instance in 1960?

A. I was, yes.

Q. And who was that?

A. I think it was Mr. Davis, I believe it was.

Q. And did you call these changes to his attention?

A. I didn't call them to his attention, no.

Q. Well, did anybody in your presence while he was there, call them to his attention?

A. No, we didn't call it to his attention personally, no.

Q. All right, and you knew, didn't you, that he was down there to check on these things like that?

Mr. Sherman: I object to things like that.

Q. Changing tickets, Your Honor.

Mr. Sherman: I object to that.

The Court: He either knows or he doesn't know. He says a man came down from the office to spot check this that or

the other thing. If he doesn't know, he can say so. He says he knows he was there, if he knows the reason why he was there, let him say so. If he doesn't know, let him likewise say so. Repeat it please.

(Reporter repeats question to witness.)

[fol. 308] A. No, I didn't know that.

Q. You heard Mr. Wright testify, didn't you, that he came over to pay his fine and didn't pay it, and that he didn't ask anybody to intercede for him?

A. That is correct, yes.

Q. Do you know of any reason why the Wright ticket should have been changed?

A. Except by my mistake, no.

Q. Did you tell Mr. Rigg that there would be only two reasons which tickets could be changed?

A. I can't remember right now what I did tell Mr. Rigg, sir, if that is in my statement, I imagine it was.

Q. Do you remember him asking you about why you changed the tickets?

A. Yes, I know he asked me, I told him on account of hardship cases.

Q. And what else?

A. I told him for friends and I don't know what else, to tell you the truth.

Q. Yes, friendship and hardship, there was not anything like that involved here, was there?

A. In the Wright case?

Q. Yes.

A. No sir.

Q. And you also told Mr. Rigg that in every case where there was a change, the offender, the traffic offender knew about it?

A. To my knowledge, he always did, yes sir.

Q. Mr. Wright didn't know about it, did he?

A. Apparently not, sir.

Q. And as far as you know,—

A. As far as I know, he didn't.

Q. And you heard him testify that he didn't know about it until the investigation came—

Mr. Sherman: I object.

The Court: Sustain the objection. He has already said Wright didn't know anything about it, so what difference does it make?

Q. Now, in your procedure, changing the tickets, Mr. [fol. 309] Elwell, were they changed before or after the offender appeared with the hard copy?

A. I imagine it would be after, if I am not mistaken.

Q. Yes, it would be after, wouldn't it, so that you could change the hard copy.

A. As far as I know, somebody would bring it in or he would bring it in or it would be sent in in the mail, the hard copy woud be there, I believe in most cases, yes.

Q. And in the Wright case, Mr. Elwell, there are places on the Wright ticket that is now marked S-2, to show a disposition either in the violations bureau, or in court, are there not?

A. Yes there are, on the back of this complaint.

Q. Are they filled in on the Wright ticket?

A. No, they are not.

Q. And if it is anticipated through the violations bureau, what does that form call for to be put on in the way of information?

A. There's a block for the amount of the fine, and the costs, and the date which we never filled out.

Q. Well, it might have helped you in keeping your books, wouldn't it?

A. Not necessarily, when we had a receipt, we went and entered it in the book by the receipt, not by the back of the summons.

Q. Well, in the Wright case, the receipt isn't accurate, is it?

A. The receipt is for five dollars, that is what it had with it, so—

Q. But it isn't accurate, is it?

A. To my knowledge, it was at the time, yes.

Q. Well, you know you received fifteen dollars from Mr. Wright, don't you?

A. I know this now, yes sir.

Q. Now, did you change any of Holroyd's tickets?

A. I don't know if I did or not.

Q. You don't recall?

A. I don't recall any definite ticket, no.

Q. Did you change any of Murray's tickets?

A. Not that I recall.

[fol. 310] Q. Did Mr. Murray change any of yours?

A. I don't remember him coming to me, no.

Q. Did Holroyd change any of yours?

A. Not to my knowledge.

Q. Well, Mr. Elwell, I show you a batch of tickets here and ask you if you issued the ticket I am handing you.

The Court: Incidentally, you better get that thing out of there before it gets all mussed up, that is in evidence.

Q. Is that your ticket?

A. Yes, I issued this summons.

Q. You issued it and you signed it?

A. Yes.

Q. And is it changed?

A. That is correct.

Q. Who changed it?

A. I can't tell you who changed it, it is a scratch out mark, I possibly did, I don't know.

Q. Changed with your own consent?

A. Well, if I changed it, I probably gave myself consent, I don't know who changed it, I could have, there is nothing on there to identify the person that changed it.

Q. Who issued the receipt?

A. Officer Murray.

Q. For how much?

A. Five dollars, parking.

Q. And what was the original charge?
A. 39:4-98.
Q. That would be speeding?
A. That would be speeding.
Q. And the minimum fine for speeding is what?
A. Ten dollars and five dollars.
Q. And the receipt shows five dollars?
A. That is right, sir.
Q. May I have marked for identification, Your Honor?

The Court: It will be so marked.

(The aforementioned article received and marked as Exhibit S-9 for identification.)

[fol. 311] Q. I show you another ticket and ask you if you can show me who issued that ticket.
A. Issued by Officer Murray.
Q. Is it changed?
A. Yes it is.

Mr. Sherman: I am going to object to this first one, I don't know which ticket he is talking about. I am trying to follow the indictment where I only see the one act, and so far as the Prosecutor has—

The Court: He has already ruled that the condition of one act set forth in the indictment, there may be other acts, even though they are not specified in the indictment.

Mr. Sherman: May we know which one.

The Court: I would suggest for the benefit of all concerned at least name off the alleged defendant. Now, what is the name on that first ticket?

Mr. Aiken: Mr. Sherman is perfectly free to look at them.

The Court: Let's not be technical. I'm perfectly free to look at them too, if I want to walk around, but give me the name and we'll all know and then everybody won't be coming up here to look at it. What is the name?

Mr. Aiken: Rossi.

The Court: All right, the first ticket is Rossi. What is the next ticket you asked him in here?

Mr. Aiken: H. A. Murphy.

The Court: All right, you are still free however, gentlemen, to come up and take a look at the ticket if you want to.

Q. I forget who issued that ticket, Mr. Elwell.

A. Officer Murray.

Q. And, is it changed, and if so, from what to what?

A. The matter is changed from speeding to parking, I imagine.

[fol. 312] Q. You imagine?

A. Well, it is scratched out from where the speeding numbers would be, I can't read the number of the violation on this.

Q. Well, if you look at one of the copies, maybe you can tell there.

A. Well, it looks like it could be 34:4-98 under there.

Q. At least it was an operating offense, wasn't it?

A. Yes.

Q. And the minimum fine for a speeding operating offense.

The Court: What do you mean an operating offense. I have heard that throughout the case. What is an operating offense?

The Witness: A moving violation, Your Honor.

The Court: All right, in other words, the motor vehicle is moving.

The Witness: Yes.

The Court: And of course, the case of parking, it is not moving.

The Witness: That is not a moving offense.

The Court: All right, thank you.

Q. The minimum fine is what?

A. Well, if it is speeding, it would be ten dollars and five dollars cost.

Q. Yes, and the receipt on that one is for how much?
A. Five dollars, parking.
Q. I will ask to have that marked for identification, Your Honor.

Mr. Gerry: Your Honor, I wonder if I might have Mr. Aiken give us the numbers on these tickets.
Mr. Aiken: 3916, issued to M. D. Carson.
The Court: All right, it may be marked for identification.

(The aforementioned article is received and marked as Exhibit S-11 for identification.)

[fol. 313] Q. Will you look at that, and tell me whether or not you can tell you issued that ticket?
A. D. F. Murray, Officer Murray.
Q. And is it changed?
A. Yes, it is.
Q. From what to what?
A. There is no statute number for what it was, but there is a speeding, a mark in the speeding block, and it was changed to parking, a Borough Ordinance.
Q. And is there a receipt attached?
A. Yes sir.
Q. And how much does it show?
A. Five dollars.
Q. Now, the next one I show you, Mr. Elwell, is number 4611, issued to one Louis Rosen, and ask you if you can tell who issued that ticket?
A. Lieutenant Holroyd.
Q. And has that been changed?
A. Yes it has.
Q. From what to what?
A. From a speeding to a parking in a prohibited area.
Q. And is there a receipt?
A. Yes there is.
Q. Is there original and copy of a receipt there?
A. Yes.

Q. That means that the offender didn't get a separate receipt, doesn't it?

A. Well, there were only two copies and they are both here, so I imagine that they didn't get a receipt.

Q. And the receipt shows what was received?

A. Parking, five dollars.

Q. Now, will you look through this other batch of tickets that I have here, and tell me the tickets that you issued?

A. I have one I issued myself, and here is one issued by Officer Murray that I co-signed.

Q. May I see that one please. I don't think I asked you to have this Rosen ticket marked for identification, Your Honor.

The Court: It will be so marked.

(The aforementioned article is received and marked as Exhibit S-12 for identification.)

[fol. 314] Q. Mr. Elwell, you have just handed me ticket number 1472 issued to Carmen Sciatto, issued by him, that has been changed.

A. Yes, it has been.

Q. From what to what, can you tell?

A. It would be from speeding to prohibited area parking.

Q. And is the original and copy of a receipt attached?

A. Yes they are.

Q. That means the offenders didn't get a receipt for any payment he made?

A. Apparently not, they are both here.

Q. And the receipt is for the offense of parking?

A. That is correct.

Q. Now, of those other tickets in front of you, excuse me, me I have this marked for identification?

The Court: It will be so marked.

(The aforementioned article received and marked as Exhibit S-13 for identification.)

Q. If those tickets in front of you, Mr. Elwell, which apparently you did not issue, did you issue receipts?

A. I issued the receipts on all of these, yes.

Q. All right, are they all changed?

A. Yes, they have been all changed.

Q. And what are they changed from?

A. All of them are changed from speeding.

Q. And all to parking?

A. Yes.

Q. And all the receipts are for five dollars, are they not?

A. I think they are, yes, yes all the receipts are for five dollars, parking.

Q. May I ask to have them marked for identification, Your Honor, and I will give the number and name.

The Court: Wait a minute, take it easy here. Are these gentlemen in any way involved?

Mr. Aiken: Yes, Your Honor, I will bring that out. Can you tell me who issued each of these tickets?

[fol. 315] The Court: When I say involved, I mean allegedly involved and let the record show—

The Witness: This one was issued by Murray and myself, this one by Murray, this one by Murray, Murray, Murray, Murray, Lieutenant Holroyd, Lieutenant Holroyd, and Lieutenant Holroyd.

The Court: All right, give all of those over to them and let them make the notations on them now.

Mr. Gerry: Are they being offered into evidence at that time?

The Court: All marked for identification at the present time. You will be heard as far as their admissability is concerned. Of course, this is not the right time to put them in anyway, they can't go in now regardless of their validity or non-validity of their offering. All of them marked for identification.

(The aforementioned articles are received and marked as Exhibits S-14 through S-22 for identification.)

Q. Now, on all of these tickets that have just been marked for identification, running from S-14 no, S-9 through S-22, did the offenders plead guilty, can you tell?

Mr. Sherman: I object to that question unless it is shown on it, referring to being shown on the card itself, whether they did or did not.

The Court: I think the question better be reframed in accordance with, and after you have had an opportunity to answer each one of those exhibits marked for identification, does it show whether or not the defendants admitted their guilt of the crime charged against them?

Mr. Sherman: Well, Your Honor, I have a further ob-
[fol. 316] jection. These tickets are not by him, they are by somebody else.

The Court: If he doesn't know, he doesn't know.

Mr. Sherman: Your Honor, if you will bear with me for a minute, in the statements which the questions and answers by the Assistant Prosecutor of this gentleman, there is a list of those numbers of tickets, which he has in his possession, which are specifically asked are these yours, and he says no. Do you know whose they are, and he doesn't know. Now—

The Court: No, he doesn't say that, he said they are Murray's, they are—please excuse me a minute, I've got to get my thinking. As far as he is concerned, he said pick out the ones that you personally signed, so he did that. Then he turned around and said now, examine the other ones and he asked him certain questions which followed, when he was all done with that, he had apparently elected to say who they were issued by, and I then asked him the question before he marked them for identification, whether they were allegedly connected in any way with the other two defendants. His answer was I think I can better bring that out or something, and then he showed them again and in front of them, who were they issued by, Murray, Holroyd, and so on and so forth, then I said all right, show them to them so that they may examine them, and they will

be marked for identification. Now, however good, bad or indifferent, the identification is he said Murray and Holroyd. I think that can be inferred that because he was violations clerk he must have been reasonably well acquainted with their signatures and alike. That is the reason. They are not in evidence yet, but as far as I was concerned, they are marked for identification. That is my thinking. Now, I'm not going to ask you if you agree, but did you want to argue against me?

Mr. Sherman: Only this Your Honor, that what I was [fol. 317] trying to bring out to the court is that the Prosecutor is not following the questions and answers as given before. He is contradicting the witness here, these are different questions and answers.

The Court: He doesn't have to.

Mr. Sherman: But that is his own statement, these are his own statements given by the Prosecutor and answered by him and now he is contradicting the Prosecutor and him.

The Court: No, I disagree with that.

Mr. Sherman: May I just read this part of the paragraph.

The Court: You may read it, what are you trying to do, bind him to the statement alone?

Mr. Sherman: Your Honor—

The Court: Well, you are reading out of the statement.

Mr. Sherman: But there is in this statement where it says By Mr. Kaplan "These, he can't identify as being his or not being his," there's a list of numbers which are right here which this gentleman is reading from there.

The Court: Perfectly all right. Let me answer this one that way, how do I know he is telling the truth there, or telling the truth here. I don't know, all that is is a piece of paper, and the court passed over the whole thing, certain things are relevant and they were permitted to the jury. Other things will not be read to the jury because they are not material to this particular issue in front of the other two defendants. I specifically charged the jury that this

statement is binding upon him, and binding upon him alone, and anything he said in that statement, in no way affects either of the other two defendants. Now, the Prosecutor comes along with a brand new piece of evidence, not the same, and he has a perfect right to use that and that of course, is the reason for the court's ruling. He is not producing tickets that various people signed.

[fol. 318] Mr. Sherman: Under that theory, Your Honor, I would like to at this time demand that the Prosecutor bring in all the tickets which are mentioned in here. There is a hundred tickets, and we can have the—

The Court: Your demand for production is out of time. Denied. All right, continue.

Q. Now, looking at those tickets, that have been marked for identification, will you tell us which ones, if you can tell from looking at them, to which the offenders plead guilty of the offenses.

Mr. Sherman: I object to that again, Your Honor, they were not made by him.

The Court: Same ruling. Objections however, may be noted upon the record.

If from an examination of them, it being understood I think you said that on certain of the tickets, and I'm saying this in fairness now, that there was no notation as far as the matter of the person pleading one way or another, I think your testimony previously was that some of the tickets were returned with a check, and the back part will not be filled in where the person was supposed to put a guilty or not guilty charge, is that correct?

The Witness: That is correct.

The Court: So, your answer is that under the circumstances if from looking at those things there, your testimony should be from an examination of them, it looks as if the fellow said guilty or whatever he did say, if there is nothing on there, your answer is you don't know. Perhaps the safest way for you to answer it would be that the ticket itself shows such and such, you see what I mean?

The Witness: Yes, I have nine where the back of the hard copy has a signature under waiver or plea.

[fol. 319] By Mr. Aiken:

Q. Now, as I understand the practice in these cases is to make the change after a person has brought it in or sent in the hard copy?

A. Yes, we would have the hard copy there.

Q. So that in effect those nine people were pleading to the offense of speeding, were they not?

A. Not necessarily.

Mr. Sherman: We are getting into what somebody else is doing. We don't have the people here in court, who have signed them, we are not putting the people on the stand that made out the complaint, we are asking him something that he has no knowledge of.

The Court: He is examining the tickets, he is telling you what the tickets themselves show. I have already told him that, I am telling him from an examination of the tickets, make your answer. Overrule the objection.

The Witness: I am assuming the back, he could be pleading guilty to either speeding or parking.

The Court: See, obviously for two or three years, it's been a long time. I don't expect the man to have a memory of each individual case, so as far as I am concerned, I am ruling that if an examination of those tickets shows this that or the other thing, they are in front of me, he has a perfect right to say what is on the ticket. I couldn't remember them if it was a number of years anyway, if you said a case. I am lucky if I can sometimes remember for a week. Tickets show that all these people signed the tickets, is that right?

The Witness: That is right, yes, not all of them so.

The Court: Well then, you'd better expressly specify that a couple of them didn't sign. That is what I am telling [fol. 320] you.

The Witness: He interpreted me which I started on something else. I told him I have nine or something, I have nine where there is a signature on the back, and there is five that there is not. It is not signed at all.

Q. Now, the ones that aren't signed, is there any other way you can tell whether they plead guilty of not guilty?

Mr. Sherman: I object.

The Court: They are signing a waiver on the back. I suppose the effect of the waiver is that they are admitting and saying well here is my money and I don't want to appear so let's not worry too much about that pleading guilty. Whenever you plead, I figure it's in front of a judge, and I say that guilty or not guilty, this waiver business, it amounts to a guilty or a not guilty, is that correct, they have sent in their money and that was the end of it. That is not the situation there, is that right?

The Witness: They can still waive a trial and still pay the violations bureau. Now, yes.

The Court: Only on certain cases, on speeding up to a certain amount of speeding, is that correct?

The Witness: Yes.

Q. From those four or five that you mentioned, that were not signed on the back by the offenders, is there any other way you can tell me whether they waived their defense and plead guilty.

A. No other way.

Q. How about the receipt, doesn't that indicate something?

A. The receipt indicates they paid a five dollar parking fine, yes.

Q. There is nothing on the ticket itself though?

The Court: All right, gentlemen, it is one o'clock. Come [fol. 321] back at two o'clock. Ladies and gentlemen of the jury, you are now excused for your luncheon recess. Spectators remain seated until the jury leaves. You may leave.

(Noon recess.)

The Court: Mr. Elwell, you may resume the stand. You may continue, Mr. Aiken.

Q. Mr. Elwell, you remember being questioned by Mr. Kaplan, do you?

A. Yes I do.

Q. And you remember being questioned by him in reference to the Wright ticket?

A. I think it was, yes.

Q. And he asked you to explain the circumstances surrounding that ticket and the entries in the docket and then the cash book, did he not?

A. Yes he did.

Q. And you didn't tell him anything about finding the ticket with the five dollars in the back of the drawer, and then dictating it to Murray, did you?

A. Not at that time, I didn't remember that, no sir.

Q. You told him you couldn't explain it, didn't you?

A. That is right, at that time I couldn't.

Q. So that you have remembered that story between December of '62 and the present time, is that right?

A. That is correct, yes.

Q. That is all.

[fol. 322] Redirect examination.

By Mr. Sherman:

Q. Mr. Elwell, I direct your attention to ticket number 4585, do you have that?

A. Yes.

Q. Would you read the name on there, Mr. Elwell?

A. The name of the violator is Anthony M. Rossi.

Q. Did you change anything in that ticket?

A. No, sir, I didn't, not to my knowledge.

Q. And did you issue that ticket?

A. I issued it, yes.

Q. Is there a marking on it at all over the original violation?

A. Yes, it has been scratched out, yes, scribbled out.

Q. Is there any other marking on it, besides just marked out?

A. No other scribbling or marking out, there is an X in the prohibited area for parking.

Q. Now, I call your attention to ticket 4130, Now, did you issue that ticket?

A. This ticket is signed by Officer Murray.

Q. So that you did not issue that ticket, is that correct?

A. That is correct.

Q. And is there any writing on that ticket?

A. Other than our regular information on there, there is scratch marks, scribbled out, that is all.

Q. Now, I call your attention to number 3916, did you issue that ticket?

A. No, this was issued by Officer Murray.

Q. And is there any marking on that one?

A. Any changes, yes, there is scratch marks on it, and there is also printing, parking, Borough Ordinance, it is printed.

Q. I call your attention to ticket number 3916, that you have in your hand.

A. Yes.

Q. Now, was that issued by you?

A. No, this was issued by Murray.

Q. All right now, is there a receipt for that?

A. Yes there is.

[fol. 323] Q. What does the receipt say, signed by whom?

A. Receipt is signed by E. Elwell, per E. O., that is my name, but I didn't write the receipt.

Q. Who is per E. O.?

A. Elizabeth Oberparleiter.

Q. Does she work at the hall?

A. She does, she is the Borough Clerk Assistant.

Q. So that you wouldn't have anything to do at all with the issuance of that receipt, is that correct?

A. No sir.

Q. And it is not your writing, is that correct?

A. Definitely not.

Q. Now, of all these tickets that have been handed to you, that are marked for identification, how many of them are issued by you?

A. The ones here, these three in front of me here alone.

Q. No, all of them?

A. Just two of them.

Q. Now, out of how many are there?

A. There's 14 or 15, I'm not sure, 2 out of 14.

Q. Now, dating back again to the year of 1959, I think your testimony was that there was about nineteen thousand dollars that came in that year for violations.

A. It was a little over nineteen thousand, yes.

Q. And that money was distributed to the county and to the state, is that correct?

A. County, State, and Borough, yes.

Q. Now, which of that money or what parts of that money were distributed to the county, not in respect to the amount, but for what reasons?

A. Well, on most of the speeding and most of your violation cases went to the county except tickets that were issued by State Police, and also tickets when issued for inspection stickers.

Q. And what monies went to the Borough?

A. All the costs.

Q. The costs?

A. The five dollar costs, and parking.

Q. And did you make out checks in those cases?

A. I did, yes.

Q. And were they signed by the magistrate?

A. They were, yes.

[fol. 324] Q. And were they sent to the proper authorities, that is county as well as state as well as Borough?

A. Yes they were.

Q. And the amounts which were sent in accordance with the records which were kept, which were looked over after, and looked over by the public certified accountant, is that correct?

A. Correct sir.

Q. Mr. Elwell, I draw your attention to the particular indictment in this case, and ask you to tell us how many overt acts are in this indictment?

The Court: In case he is not well accomplished in the law, there is only one. One overt act.

Q. And you have seen this indictment before, have you not?

A. I have, yes.

Q. And you read the overt act that was in here?

A. I did, yes.

Q. Were any of the matters which were drawn to your attention on these tickets cited in any place in this indictment under the overt acts?

The Court: Well, I will instruct the jury right now, they need not under the law. So, let us stop this foolishness now. Don't confuse the issue. Under the law, ladies and gentlemen of the jury, in a conspiracy case such as this, the state need only put in one overt act. The state cannot prove a hundred overt acts if they want, they don't have to be set forth in the indictment. They have to prove the illegal agreement to do the unlawful act, or vice versa, and of course secondly, they have to prove at least one overt act in a case such as this. However, the state is not limited to the one overt act. If there are a hundred overt acts, the state can prove them. Now, let's not fool around with any of this foolishness. Let's get on with it. You asked for that specific charge, now you've got it.

[fol. 325] Q. Mr. Elwell, were you questioned as to each and every one of these tickets that are before you prior to today's hearing when the Deputy Attorney General as well as the Assistant Prosecutor asked you questions?

A. Yes I was.

Q. And were the answers that you gave all in this statement that are before us today?

A. They are, yes.

Q. That is all.

Recross examination.

By Mr. Gerry:

Q. Mr. Elwell, in reference to the one overt act that is mentioned in the indictment, this has reference to Mr. Wright?

A. That is correct.

Q. Now, it is my understanding from your testimony in relation to that matter that the Wright ticket that was found by you some time late in December, when you were going to turn over the job of violations clerk to your successor?

A. That is correct, I found it.

Q. And do you recall whether or not you did find the Wright summons, did it have any money or checks attached to it?

A. It had a five dollar bill attached to it, yes.

Q. Do you recall whether or not the ticket had been changed in any way when you found it?

A. Yes, it was marked to parking.

Q. Now, you further testified, did you not, that Mr. Murray didn't know anything about the fact that this ticket was lost or anything else about it, is that correct?

A. That is correct.

Q. And from your recollection, the manner in which you assisted him, he at no time saw this particular ticket or anything associated with it, except in the books.

A. I had that ticket with the other tickets in front of me, and read the information off to Mr. Murray.

Q. Now, I believe that also asked of you was whether or not Mr. Murray ever asked or questioned you about this [fol. 326] ticket, was there ever any reason for Mr. Murray in January of 1960, to know about this ticket, or ask any questions about it?

A. No, there shouldn't have been any question on it. Even as far as the date, because we have often had postpone-

ments for a month or so on a case, so actually there was no question asked on it as far as time and all.

Q. I think that you have mentioned, have you not, Mr. Elwell, that it was the responsibility of the violations clerk to make entries into the docket book and cash book and so on while he was the violations clerk, there was no question about that, was there?

A. That is correct.

Q. And that after January the 1st, 1960, this responsibility became that of Mr. Murray.

A. That is correct.

Q. In reference to the entries into the book, on the Wright ticket which was January the 8th, 1960, despite that fact from your testimony, as I understand it, he did not see this ticket or notice anything about it at any time, other than what you dictated to him?

A. That is correct, I dictated it to him.

Q. He was making the entries into the books and writing up the receipts as you read this stuff off to him?

A. That is what he was learning at the time, how to do that part of the job.

Q. You were also asked, I believe, about whether or not the cash drawer was open, the drawer of the violations cabinet in which you described all of the tickets and checks and so forth were put. Was this right in the police headquarters?

A. Yes, it was right in the police station.

Q. And police headquarters is open 24 hours a day?

A. Yes.

Q. And say assuming there was a police officer in headquarters 24 hours a day.

A. I don't know for sure, back in 1959, there is now, we have a radio dispatcher 24 hours a day, but I don't think we had in 1959.

[fol. 327] Q. For the most part though, was there some officer in the police headquarters most of the time?

A. Yes, either an officer or somebody from the tax office right next door.

Q. I think you mentioned that some time earlier in 1960, a representative of the administrative director's office came down and made a spot check.

A. That is right.

Q. And you were present at the time?

A. I was, Officer Murray and I were present.

Q. And I assume that that was so, because you were both violations clerks or had been over the period in which he was going to look into?

A. That is correct.

Q. And Officer Murray obtained for the investigator the summons that he wanted to look at?

A. He had I guess you would call it a work sheet, and he would mark down the different numbers offhand of tickets, and tell us to pull those tickets out of the files, and would go and get them for him and give them to him.

Q. And was this done, were these taken out for him?

A. Yes they were.

Q. And the ones that you saw him go over, did any of those have any alterations on the face, that you can recall?

A. Yes they did.

Q. Apart from anything that may have been said to you about such, or that you may have volunteered to him about such tickets, did he make any comment to you or to Officer Murray about such tickets?

A. No, he just marked it down on his report and that was all.

Q. Confining your attention to January of 1960 when the Wright summons was actually processed by entering into the books and so on, do I understand that at that time there was simply a five dollar bill attached to the Wright summons?

A. That is correct, there was a five dollar bill on it.

Q. And to your instructions, a receipt for five dollars was written out by Officer Murray from the receipt book?

A. There was a five dollar bill on the ticket, and that's [fol. 328] how I read it off to him, as parking. He made out the receipt and marked it in the book.

Q. So that so far as the first instance when Officer Murray became acquainted with the Wright matter, on that date of January the 8th, 1960, there was no conceivable possibility of manipulating funds in any, because there was only five dollars there, is that correct?

A. That is correct.

Mr. Aiken: I object, this is a conclusion of counsel.

The Court: Reframe your question.

Q. There was only five dollars attached to the Wright summons at that time, January of 1960?

A. That is correct.

Q. And a receipt for five dollars was made out, was it not?

A. Correct.

Q. And an entry of five dollars was placed in the book, in the docket book, in the cash book, in both?

A. Yes.

Q. Now officer, so far as the understanding to which you have eluded earlier, which existed between some members of the Barrington police regarding the prior consent of the arresting officer to any change in a ticket which he issued, which was based upon any written regulation promulgated by the Chief of Police or Director of Public Safety?

A. No, we didn't have any written order or anything on it at all, no sir, common practice.

Q. Had this come from any source other than simply an informal understanding?

A. No sir, just an informal understanding.

Q. Were there any meetings held within the police department that this was to be done?

A. No sir, there were not.

Q. No formal meetings or anything?

A. No sir.

Q. Now, in a ticket on which the face has been changed in some way, or altered, can the arresting officer, or did

[fol. 329] it necessarily follow or not from your experience in the department, that the violations clerk made that change?

A. No, not necessarily, no.

Q. Anyone in the department who had access to the drawer could have made that change, could he not?

A. That is correct, anyone could've, yes.

Q. Mr. Aiken, in asking you a question earlier, Mr. Elwell, I believe asked you whether or not you stated before that in order to change any police summons issued by another officer, whether or not you had not said under those conditions that the officer changing the ticket had to clear it or get the consent of the issuing officer. Now, is that necessarily so?

A. A lot of occasions where you couldn't possibly have seen the other officer, due to working shift and all that is when it could've happened.

Q. Were there any notations made on the ticket that had been changed by the arresting officer signing it, or otherwise indicating that he had?

A. No.

Q. I think that's all.

Recross examination.

By Mr. Aiken:

Q. Mr. Elwell, you did tell Mr. Rigg under oath that in order for a ticket to be changed, it had to be done with the O.K. or consent of the issuing officer, didn't you?

A. I did, yes.

Q. Are you telling us that that is not true?

A. I am saying that if he couldn't contact the other officer, he could be on vacation, he could be working a different shift, possibly he could've changed it without his knowledge.

Q. I am asking you what you told Mr. Rigg under oath is that true or is that not true?

A. Yes, to the best of my knowledge, it is true.

Q. But you said to him that it had to be O.K.'d or consented to by the issuing officer, didn't you?

A. That is correct.

[fol. 330] Q. Now, of those 14 or 15 tickets in front of you, you testified that you only issued 2 of them and I ask you isn't it correct that you issued 10 of the receipts in connection with those tickets?

A. As violations clerk, my name is on the receipt, yes.

Q. And you issued the receipts after they were changed?

A. Yes, it had to be after they were changed.

Q. So when you issued the receipts, you knew they were changed?

A. Yes.

Q. Now, you said in connection with the Wright ticket that there was no reason for Mr. Murray to ask any question about it, do you recall that?

A. Yes.

Q. Now, the entry in the traffic docket does show, does it not, the date the entry was made?

A. Yes.

Q. What date was that?

A. January the 8th.

Q. And the date of the offense was when?

A. September the 15th, 1959.

Q. And are you telling us now that there is nothing unusual about a ticket being some three or four months old?

A. No, there is nothing unusual about that?

Q. Is there anything in the docket to indicate that there is anything unusual about it?

A. Nothing at all, no.

Q. Is there anything on the ticket to indicate that there is anything unusual about it?

A. No.

Q. Do you have the ticket there?

A. No, I don't think so.

Here it is.

Q. Will you look at the ticket, and tell me whether or not it shows anything unusual about it, as far as dates or time is concerned?

A. I don't think as far as the date is on here, as the date it was issued, and the court appearance date.

Q. There is nothing unusual there about it?

A. No.

Q. No postponements marked either on the ticket or in the docket to indicate why such a great period of time [fol. 331] elapsed in connection with that entry regarding that ticket is there?

A. No.

Q. As a matter of fact, all of the entries surrounding the Wright ticket entry in the traffic docket relate to much closer dates of offenses, don't they, in December?

A. Right up to the top of the page, we have four of them that was issued in September, and entered in December.

Q. That is right, and then one month later we have got one that was—there is a note there, isn't there about those, and what does that note say and what does it mean?

A. They were cases that were closed out, yes.

Q. Yes, it also says the state was notified, doesn't it?

A. They were closed out, yes.

Q. The state was notified, weren't they?

A. Yes, on them they had to be.

Q. And it says that in the docket—

A. They have to be notified on that, yes.

Q. But it doesn't say anything about Wright, does it?

A. His case wasn't closed out.

Q. Does it say anything special about Wright?

A. No it doesn't.

Q. Now, this man you said came down from the Director's office in 1960, his name was what?

A. I think his name was Davis.

Q. You never did find out where this five dollar bill that got attached to the Wright ticket, came from, did you?

A. No, I did not.

Q. That is all.

Redirect examination.

By Mr. Sherman:

Q. Officer Elwell, when Mr. Davis came down or whatever that gentleman's name was, did he look at the tickets similar to tickets that are before you today, where there is markings and crossings out on them?

A. Yes he did.

[fol. 332] Q. Did he see markings and crossings out on these tickets?

A. Yes he did.

Q. Did he say anything to you?

A. No sir.

Q. Or to any of the other officers in this court today as defendants in your presence?

A. No he did not.

Q. Did he make any remarks at all about this ticket or tickets similar to that with crossings or markings on them?

A. No he did not.

Q. Did he question any of them at all?

A. No sir.

Q. Now on these tickets and receipts, each receipt that you issued in this case where you were violations clerk?

A. That is correct.

Q. Now, for the purpose of again informing the jury, would you look and see what was on here, is that correct?

A. Correct.

Q. And whatever is on here you marked a receipt for, is that correct?

A. Yes.

Q. So that if you had marked five dollars for a violation of a city ordinance or a prohibited parking, you made your receipt in accordance with what was on here?

A. That is correct.

Q. You did not change these, did you?

A. No I did not.

Q. You changed just one out of this whole group that has been presented by the Prosecutor today?

A. That is correct.

Q. And your receipts, each and every one of them, was based on what was on here, is that correct?

A. That is correct, sir.

Q. And you were following the orders which you were instructed to as a violations clerk, and wasn't that your duty?

A. It was, sir.

Q. And wasn't it your duty to follow what was on here and marked the receipt in accordance with what was on here?

A. It was.

Q. Did you comply with that duty?

A. I did.

Q. That is all.

[fol. 333] Recross examination.

By Mr. Gerry:

Q. I direct your attention to those tickets which Mr. Sherman has just referred, is there anything there to show that the changes were made on this by either Officer Holroyd or Officer Murray?

A. No, you couldn't identify just who made them, they are just scratch marks.

Q. Well, those parts other than the scratch marks on those tickets, there is no writing on them at all, isn't that correct?

A. That is correct.

Q. Now, going back to the Wright matter, if I may, was it at all uncommon a matter would be postponed, and postponed for several months before it ever came to a conclusion?

A. We had quite a few cases like that where it is postponed.

Q. So that when you read Officer Murray your date on that Wright summons and he issued a receipt of January the 8th, when it was marked into the book, would there be

any reason for him to feel that something was unusual or something was wrong?

A. No, no reason at all.

Q. Now, so far as those other cases are concerned, that you pointed out to Mr. Aiken, of some vintage you said were closed out, were closed out for a particular purpose?

A. Yes, the defendant could not be located, he never came into court and we couldn't locate them.

Q. There was no indication that Mr. Wright, the man on that summons, could not be located, was there?

A. No sir.

Q. So it was handled in an ordinary manner?

A. That is correct.

Q. And under those circumstances that existed in the Wright matter, would you have put closed out as you have with those other ones in which the entries were made?

A. I wouldn't close out Wright's ticket, no.

Q. Now, Officer Elwell, when you said that the arresting [fol. 334] officer had to be contacted to get his consent, did you mean that he had to be contacted to get the consent according to the usual procedure if it were followed by the officer who wanted to make the change?

A. Yes, I guess if he was following a usual procedure.

Q. Was there anything to prevent him from not contacting the arresting officer?

A. There could be a lot of reasons for him not. The man was on vacation, the man working a shift, I might go for a month without seeing Officer Murray, if I am working a night shift and he is working a day shift before our hours come together again. See we work six different shifts all together.

Q. So that the officer had gone to make a change only had to do this if he decided he'd live up to the usual unspoken procedure?

A. That is correct.

Q. You had a special reason or motivation for not doing so, he would do so?

A. That is correct, yes.

Redirect examination.

By Mr. Sherman:

Q. Mr. Elwell, when any of these tickets which have been shown to you by the Prosecutor, was there any checks issued by any one of these offenders prior to the time that they paid these five dollars or so?

A. No, there was not.

Q. In other words, you are familiar with the overt act in the indictment, where a check was issued for fifteen dollars, is that correct?

A. Yes.

Q. Now, in these particular cases, were any monies paid prior to the time that you issued a receipt for five dollars?

A. Only the five dollars.

Q. So that there was no check for fifteen dollars, and no fifteen dollars paid before, and a receipt issued for what was there?

A. No, there was five dollars paid on each one of them.

Q. May I show this to the jury, Your Honor?

[fol. 335] The Court: You may not, it is not in evidence. It is just marked for identification.

Mr. Sherman: That is all.

Recross examination.

By Mr. Aiken:

Q. Mr. Elwell, you testified that you made these entries in the docket, and issued the receipts and changed the tickets that you changed, as I understood your question and answer, in accordance with instructions and at somebody's direction. Will you tell us whose instruction and whose direction you were following?

A. Just that I was violations clerk, and the directions that I had to run the books and do all this work.

Q. Well, did somebody instruct you to make those changes?

A. No, not to my knowledge, I don't remember anybody definitely coming to me on any of them.

Q. That is all.

Redirect examination.

By Mr. Sherman:

Q. It was your duty however, to issue receipts, is that correct?

A. That is correct.

Q. And you issued a receipt in accordance with the ticket, what was on the ticket?

A. Correct.

Q. And therefore, all receipts which you issued, they were in accordance with the tickets, is that right?

A. Yes.

Q. That is all.

Mr. Aiken: In accordance with the changed ticket.

The Witness: With what was on the ticket.

Mr. Sherman: I object to that.

The Court: Overrule the objection. Apparently there is testimony in the case that each of these tickets was changed. If they weren't changed, say so. I think he admitted already that they were changed from speeding to parking.

[fol. 336] Mr. Aiken: I think that's all.

Recross examination.

By Mr. Gerry:

Q. Officer Elwell, I wonder, whether I could trouble you to look at summons number 4516. Can you tell me from looking at that summons what the original charge was.

A. I imagine it would be speeding, it is marked up in the speeding block, but it is all scribbled out, you can't read any numbers or violations number.

Q. May I take a glance at that. That's all, I made a mistake. That's all.

Redirect examination.

By Mr. Sherman:

Q. Officer, will you tell us, looking at those tickets, are any of those tickets, the dates on them prior to January 1 of 1959?

A. They are all in 1959, sir, all of them were issued in '59.

Q. Now, how many of them do you have there from January of '59 to September of '59?

A. Nine.

Q. Did you at any time during January of '59 up until September of '59, have any agreement with these two defendants concerning any of these tickets which you have in your hands concerning any changes to be made or concerning the doing of some unlawful act in respect to those tickets?

A. No sir, I definitely did not.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. You had an understanding with them that you would honor these changes made and as violations clerk, change them in the book.

A. I would enter them in the book as the ones on the ticket.

Q. That is right, and you knew that Mr. Murray and Mr. Holroyd understood that arrangement, didn't you? [fol. 337] A. I don't know if they understood what my job was as far as entering it in the book.

Q. Well, there wasn't any doubt about that if they changed one of them, they expected you to make the appropriate entry.

A. That would be the only way I could enter it in the book.

Q. And wouldn't you call that an understanding or an agreement?

A. No, I wouldn't call it an understanding or an agreement, no.

Q. All right.

Redirect examination.

By Mr. Sherman:

Q. You did not, did you, from January of '59 to September of '59, conspire with these two defendants to obstruct the justice of this state, by making these changes in these tickets.

A. I did not, no sir.

Q. That is all.

The Court: You may step down.

(Witness excused.)

MARIAN LOUISE ELWELL, having been duly sworn, testifies as follows:

Direct examination.

By Mr. Sherman:

Q. Mrs. Elwell, you are the wife of Eugene Elwell?

A. Yes I am.

Q. Where do you live, Mrs. Elwell?

A. 207 Gloucester Pike, Barrington, New Jersey.

Q. And you and your husband have lived there for how long?

A. It will be twelve years this month.

Q. Now, the last nine or ten years, to the best of your knowledge, has your husband been a police officer in the Borough of Barrington?

A. Yes he has, eleven years.

[fol. 338] Q. I direct your attention specifically to the year of 1959, can you recall whether or not your husband was also acting as a violations clerk at that time in the Borough of Barrington?

A. Yes he was.

Q. Now, did he at any time during that year, bring home books from the Borough Hall and in reference to his job as a violations clerk?

A. Yes he did.

Q. And did you have occasion to help him with those books?

A. Yes I did.

Q. And how often would you say during that year that you helped him with those books?

A. Well, when he wasn't on night work, which was frequently, I helped him two, three times a week.

Q. Would you tell this jury just what you helped him, what did that consist of?

A. Well, he'd give me the tickets and I'd call them off, the names on the front, and he'd put them into the book.

Q. The only year you know of is in 1959, is that correct?

A. Yes.

Q. That is all.

Mr. Gerry: No questions.

Mr. Aiken: No questions.

The Court: You may step down, thank you.

(Witness excused.)

Mr. Sherman: Your Honor, there are character witness I would like to have permission to put on after the other two defendants take the stand so we can save some time.

The Court: All right, you may have such permission. Are there any other witnesses that you want to put on personally at this time?

Mr. Sherman: We have no other witnesses except for character witnesses.

The Court: Well, it is to be understood that they will come in at a later time of the proceeding. I believe then, Mr. Gerry, it is now your move.

[fol. 339] Mr. Gerry: I would like to call Officer Murray to the stand.

DONALD F. MURRAY, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

Q. Officer Murray, you are presently employed as an officer in the Barrington Police Department?

A. That is correct.

Q. And where do you live, Officer Murray?

A. 522 Charles Avenue, Barrington, New Jersey.

Q. Are you married?

A. Yes.

Q. How long have you been married?

A. Since 1954.

Q. Do you have any family?

A. Yes, three children.

Q. How long have you been an officer in the Barrington Police Force?

A. Since May of 1957, it will be six years. Well it was just six years.

Q. And what is your present rank?

A. Patrolman.

Q. Have you had occasion at any time to serve as a Deputy Violations Clerk with the violations bureau of the Borough of Barrington?

A. Yes.

Q. And on what year did you so serve?

A. Well, I served as Deputy Violations Clerk in every year but 1960, and that year I was violations clerk.

Q. How about the following year, did you continue as a Deputy Violations Clerk?

A. Yes.

Q. What was the practice over this period of time so far as Deputy Violations Clerk was concerned, who was Deputy Violations Clerk?

A. All the police officers in the department, other than the one who was appointed as violations clerk.

Q. And in that capacity, was the Deputy Violations Clerk authorized to do by a customary procedure?

[fol. 340] A. To accept fines from people, defendants, on summonses and write out receipts.

Q. Was there any particular reason why there were Deputy Violations Clerk while you had a violations clerk?

A. Well, yes, Deputy Violations, we all served as Deputy Violations Clerks to allow for motorists who were arrested at night, late in the morning, who wished to pay their fine at the particular time, it didn't necessitate us getting the violations clerk out of bed if he should be in bed at that hour.

Q. Now, when these fines were paid over the desk to a Deputy Violations Clerk, what else would the clerk do, other than separate the hard back copy or waiver of plea?

A. He would take the money on it, and issue the receipt to the people.

Q. And thereafter what would he do with the money or cash or check or summons that was involved?

A. He would put a paper clip on them, put them in the filing cabinet where the violations were kept in the drawer.

Q. And was the violations cabinet right in the police headquarters building?

A. Yes it was, right in the station.

Q. Was it accessible to other members of the police department other than the violations clerk?

A. Yes sir, at all times.

Q. What types of matters could a Deputy Violations Clerk or the violations clerk accept fines on?

A. Well, he could accept them on minor violations such as speeding, red light, careless driving, inspection sticker, he wouldn't be permitted to accept them on drunken driv-

ing, reckless driving, leaving the scene of an accident, things of that nature.

Q. Now, you mentioned speeding, was that through the authorization of the magistrate of the court at that time, to accept fines for speeding?

A. I beg your pardon?

Q. Would the acceptance of fines over the desk for speed-
[fol. 341] ing consistent with the court's authority, the magistrate?

A. Yes sir.

Q. That sometimes has been changed, has it not, Officer Murray?

A. That is correct.

Q. Now, Officer Murray, you have mentioned that during the year 1960, you served as a violations clerk of the Borough there in Barrington, is that correct?

A. That is correct, sir.

Q. And did you just serve for one year?

A. Yes sir.

Q. Now, in addition to serving as violations clerk in Barrington for the year 1960, did you have any other duties to perform?

A. My regular duties as a police officer in the Borough.

Q. Were you in any way privileged or relieved from any part of your duties as a police officer that you performed prior to becoming the violations clerk?

A. No I was not.

Q. How often did you have an opportunity to work on the books of the violations bureau?

A. Well, I would work on them whenever it necessitated, which maybe would arise once or twice a month, it could arise every week, depending upon the load.

Q. Directing your attention to the year 1959, could you from your experience characterize the degree of business or the degree of summonses that passed through the violations bureau?

A. Yes, I would say that 1959 was exceptionally heavy.

Q. Did this heavy period extend into the early part of 1960?

A. Yes it did, 1960, the early part.

Q. As you recall, was there any particular feature in the operation of the Barrington Police Department that gave rise to the increase, if you know, of traffic tickets that were handled?

A. Yes, we had acquired radar at that time.

Q. And is radar usually productive of more violations?

A. Yes, by far.

[fol. 342] Q. Now, how long did that radar machine remain in operation after you first acquired it in 1959?

A. I can't specifically say, I can't give you a date, it remained in operation up until the early part of 1960 when it was broken.

Q. Now officer, I would like to ask you whether or not in your capacity as a violations clerk during the year 1960 or at any time theretofor, if you've ever had an opportunity to observe a traffic ticket which appeared to have been changed on its face?

A. Yes I have.

Q. Now, on such tickets, what was the nature of the alteration generally made?

A. It would be crossed out, simply scribbled out on the face of the summons, and a check or something of that nature inserted in the parking area.

Q. Were these changes obvious only to a violations clerk or to a police officer, or could anybody look at them and know this type of a change?

A. They would be quite obvious to anyone viewing those summonses.

Q. Were there instances where the crossing out even left some indication of what was underneath?

A. Yes.

Q. Now officer, in your capacity as a violations clerk, were you required to make reports?

A. Yes I was.

Q. And by this report, I mean reports of operation of violations bureau and of the traffic offenses that came into the bureau during a given period of time, and the disposition of such traffic offenses?

A. Yes.

Q. Now, can you tell me to whom, if anyone, these reports were made and for what periods of time?

A. Well, I made a monthly report to the mayor and council of the Borough, I also made a monthly report to the County Treasurer's office and to the State, to the director of the administrator of the courts, and also a quarterly report to the state.

Q. Now, to your knowledge while you served as a violations clerk of 1960, was there any failure to ever make any of those reports?

A. I'm sorry, I didn't get the last part of that.

[fol. 343] Q. During your term of 1960, as the violations clerk, were those reports that you have described for us, always made or were there any omissions?

A. No sir, they were always made.

Q. Now, in addition to the reports which you have described you made, and were obligated to make, as a violations clerk in 1960, was there any audit ever made of the books, cash books, docket books, receipts and so on, in the financial end on file of the violations bureau?

A. Yes, the auditor would audit and there also was a spot check from the administrative office of the courts.

Q. Were the auditors special auditors in the sense that they were fellow employees or something or the Township or were they independent auditors?

A. They were independent, sir.

Q. How often were these audits made?

A. I think the Borough auditors audited annually, and the spot checks were made periodically two years.

Q. Now, by spot check by whom were the spot checks made and was it made by an individual or by an office?

A. By an office.

Q. By which office?

A. By the administrative office of the courts, the director.

Q. And now, when these spot checks were made, what does the word spot check mean?

A. Well, that would infer that they came down and they went through summonses at random, they didn't take them

all, they just picked out summonses and looked at them to see that they were O.K.

Q. Would the investigator to your knowledge, actually look at the summons and complaint that comprised the packet in the entire particular case that he chose to call for?

A. Yes, he looked at the whole thing.

Q. Would he cross check with the information found in your cash book and your docket book?

A. Yes.

Q. Did he also check the receipts?

A. Yes.

[fol. 344] Q. Now, so far as this type of spot check is concerned, while you were serving as a violations clerk, did you ever know when he was coming down in advance to check your books and look at everything?

A. No, I didn't.

Q. It was an unannounced examination?

A. That is correct.

Q. Was there an examination made by a representative of the administrative director of the courts during the year of your tenure in 1960?

A. Yes there was.

Q. Did you recall approximately when that was made?

A. It was made in the first part of 1960, I believe it was in March.

Q. Do you recall who it was, the name of the party that came down from the office?

A. Yes I do, Mr. Davis.

Q. And when he came down, did you or anyone else assist him in obtaining the records and the information that he requested?

A. Yes, Officer Elwell and I did.

Q. And did you have an opportunity to observe Mr. Davis as he was working over the various summonses and complaints, complaints which he had requested?

A. Yes I did.

Q. Do you have any personal knowledge from your own observations, not what somebody else might have told you,

do you have any personal knowledge that any of the summonses and complaints which were requested by Mr. Davis had any changes on their face?

A. Yes, I do know, I happened to hand him several of them.

Q. Now, did you make any comment to him about those summonses?

A. No, I didn't.

Q. Did he as a representative of the administrative director of the New Jersey courts, have anything to say to you or to Mr. Elwell about such summonses?

A. No, he just examined them and entered them on his work sheet.

[fol. 345] Q. Now, prior to taking over the violations clerk job in 1960, had you any background or any education or experience at all with bookkeeping or accounting, anything of that sort?

A. No, none at all.

Q. Did you receive either at the commencement of your service of 1960 or at any time during your tenure as a violations clerk any instruction, any explanations from the magistrate of Barrington Municipal Court from the administrative director of the courts or from any other source?

A. No, the only instructions I received was from the preceding violations clerk.

Q. And who would that be?

A. Officer Elwell.

Q. Did you ever receive from the local magistrate, from the administrative office, and from any other source, any written material explaining the nature of your obligation and duties?

A. No I did not, not that I know of.

Q. Now, were there present in the police department any source of statutory law, do you know?

A. We had books, law books in our hall there, yes.

Q. What did the law books look like, what color were they?

A. I hate to admit it, but I am color blind.

The Court: So are some of the lawyers and judges that read them, I put myself in that too.

Q. Officer, have you ever apprehended anyone for going through a red light?

A. Yes.

Q. You say that there were some source of what you call law books in the police department?

A. Yes.

Q. Was there any book promulgated by a Supreme Court on the rules of procedure in the various courts of our state?

The Court: You can show him a simple copy if you want.

Mr. Gerry: I wish I had one.

Mr. Aiken: I don't think it's the type they had, Your Honor.

[fol. 346] The Court: They may have something in the nature of pamphlets or something like that, did you get any kind of a white pamphlet or any other business?

The Witness: Not that I know of.

Q. Now then, despite the color of these law books, as you call them, did you ever have the occasion to examine these law books?

A. Only once in reference to my police duties.

Q. How about with reference to the duties, obligations, and limitations on your authority as a violations clerk?

A. No sir.

Q. Are you trained in the law in any way, you are not a lawyer, are you Officer?

A. No sir.

Q. Did you ever go to law school or have any courses in law?

A. No sir.

Q. Did you ever have an opportunity to go through the book on rules of procedure promulgated by the Supreme Court?

A. No sir.

Q. You say that you did receive some assistance and help by Officer Elwell who was the outgoing violations clerk when you first took over, is that correct?

A. That is correct.

Q. Do you know whether or not this was customary procedure, had it been done before or not?

A. It was my understanding it was done with every violations clerk whoever took office.

Q. Now, can you tell us the assistance which Officer Elwell gave to you when you first took over your job as violations clerk?

A. I am sorry, I don't understand that.

Q. When you first took over your job, after the beginning of 1960 as violations clerk, what type of help did Officer Elwell give you?

A. Well, he assisted me in showing me how to enter things into the book, and everything went with the job, as far as the blue cards that had to go to Trenton.

[fol. 347] Q. You did initially the blue cards that had to go to Trenton?

A. Yes.

Q. Now, in January of 1960, which I think would be approximately six or seven days after you first took office, did you have an opportunity then or about then to go into the violations drawer and make one of the periodic postings?

A. Yes, we worked on the books at that time.

Q. And can you tell me the mechanics or procedures by which who did what and how did he help you?

A. Officer Elwell showed me what first had to be done, how to enter into the docket book, how to enter into the cash book, and receipts to be written on the blue cards and so forth, and then Officer Elwell took the pack of tickets, the money and checks, and read the name of the party, I would sit and merely write the receipt, the amount of the fine, and what the offense was, pass a receipt to him, and then I would write while he read the name again, and so on and so forth.

Q. Did you make all of the entries in the book?

A. The cash book docket and what have you, yes.

Q. And did he do all the reading of the actual summonses and complaints?

A. Yes.

Q. You mentioned that when you wrote out a receipt for a particular matter, that had been read to you, you would hand that receipt to Officer Elwell?

A. Yes.

Q. And that would be attached to that particular summons or complaint?

A. Yes.

Q. Now, as you went through this procedure, what happened when you got down to the bottom of the pile?

A. When everything was disposed of, and we had all the entries made, the receipts had been written out on all the summonses, rubber bands were put around them and they were put in another drawer which was strictly for storage purposes.

Q. And at this point you had made in reference to all and to each of those summonses, all the necessary entries into [fol. 348] the books as dictated to you by Officer Elwell?

A. Yes.

Q. Now, approximately how long a period of time was he good enough to help you out in learning your job?

A. Well, he helped me through January, and partially into February.

Q. Now, during this period of time, did you actually have opportunity to see the summonses from which the information was being read?

A. No sir, I don't see the summonses.

Q. And now, after these summonses or whatever you have to do with them, when an elastic band is put in, are they put into a dead drawer, so to speak?

A. Yes they are.

The Court: Gentlemen, it is now four o'clock. Ladies and gentlemen of the jury, we will adjourn for today. You

will return tomorrow at quarter of ten, room 326. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

June 5, 1963
Camden, New Jersey

[fol. 349]

Appearances as before.

The Court: Ladies and gentlemen of the jury, I owe you an explanation. You see, unfortunately, when judges especially in the criminal division are trying to handle three or four things at the same time, and this morning I ran into one of those situations and it was in the nature of an emergency matter which required me to go into conference with the boss of all those judges, namely Judge Schalick, the chief assignment judge, and of course he is the boss so I cannot refuse to have a conference if he kind of requested. That is being tactful, and diplomatic at least, and practical to save a job. So that we're a little late getting started even though again for inconveniencing you, my most sincere and humble apologies. All right, Mr. Murray, you have already been sworn. You do not have to be sworn again. Resume the stand.

Donald F. Murray, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

Q. Officer Murray, yesterday I addressed a few questions to you in relation to your duties as a patrolman on the Barrington police force, apart from your services as violations clerk during the year 1960. I think I asked you whether or not you were relieved of any regular duties that you otherwise would've had by reason of the fact that you were violations clerk.

A. Yes, you asked me that question, and I said that I had not been relieved of any duties.

[fol. 350] Q. Now officer, directing your attention again to the duties simply as a patrolman and a member of the police department, what kind of hours did you work, did you work shift or the day hours, or how does it work?

A. Yes sir, we worked shift work. We have six different shifts that we work.

Q. And the six different shifts would cover what period of time?

A. Well, it would run into approximately six or seven weeks.

Q. Was there any more than one officer who comprised a given shift?

A. Yes, normally we have, well it balances out that we normally try to have two men in the car at one time.

Q. Now, during the course of your work as a patrolman on the Barrington police force, did you work on shifts with either Lieutenant Holroyd or Officer Elwell more than any other members of the police department?

A. No sir, the schedule was so arranged that you would work the same amount of time with each man, normally.

Q. Schedule is set up that way?

A. Yes.

Q. Now officer, directing your attention again to the experience which you had as a violations clerk in Barrington during 1960, I would like to ask you if an arresting officer on a given traffic violation which was subsequently changed, some change made in the initial charge that was brought on the ticket, if the arresting officer did not make that change, does it follow that the violations clerk would have made that change?

A. No sir, it does not follow. Any member of the police department could make that change.

Q. Going back for a moment to the specific ticket that is referred to in the overt acts, in the indictment, the one which was issued to Robert Wright, you were in court, were you not when Mr. Wright testified?

A. Yes I was.

Q. Had you ever at any time in your life ever seen Mr. Wright before?

A. No, the first time I saw Mr. Wright was when he [fol. 351] appeared here to testify.

Q. If you know him directly or indirectly in any way, would you so state?

A. No sir, I never met Mr. Wright, I didn't know him at all.

Q. Now, prior to the time when Mr. Wright's check was introduced into evidence a few days ago, had you ever seen that check before?

A. Yes sir, I had seen it at the Prosecutor's office when they took a deposition from me, that was the first time I had ever seen the check.

Q. And that would be the statement taken by Mr. Kaplan?

A. That is correct.

Q. And they were taken when?

A. I believe it was December of 1962.

Q. That was the first time that you saw the check of Mr. Robert Wright?

A. Yes sir, that was the first time.

Q. Did you apart from seeing it, know the existence of that check prior to your examination by Mr. Kaplan in December of 1962?

A. No I did not know that a check had been issued by Mr. Wright.

Q. Did you have in December of '62, an opportunity to examine the check of Mr. Robert Wright?

A. Yes I did.

Q. Did you have an opportunity to examine any endorsement that may have been made on the reverse side of that check?

A. Yes I did.

Q. And are you able to tell us whether or not the endorsement on that check, anything else written on that check, is in your handwriting?

A. No sir, there was no writing on there that was mine.

Q. Did you prior to December of 1962 when you were questioned by Mr. Kaplan, have any knowledge of the fact that the Wright summons had been misplaced or lost in any manner?

A. No I did not.

Q. At the time that the Wright matter was disposed of, in January of 1960, in the books of the violations bureau, [fol. 352] did you have for any reason, any particular interest or knowledge of the Wright matter?

A. No sir, I had no knowledge or particular interest in it.

Q. Officer Murray, this may be repetitious but we have had over-night between the periods of testimony. Were you ever instructed by anyone as to the limits of your authority, to define your authority as a violations clerk?

A. No sir, I have never been instructed.

Q. What was your understanding of the powers of the violations clerk in reference to the handling of traffic offenses when you served in that capacity?

A. That I had the authority to dispose of summonses which came under the violations bureau, and not directly in the court.

Q. And with the matters which would be the subject of these traffic complaints and summonses be confined in some nature, the nature of these things?

A. I am sorry, sir, I don't understand that.

Q. The matters which you conceived to be within the authority of the violations clerk, were they only to traffic offenses?

A. Yes sir, as far as I know that was strictly it.

Q. How about the violations or the charge of drunken driving, did you ever have any of those?

A. Did I ever process any?

Q. Yes.

A. Yes I did, sir.

Q. Were there ever any changes made in anything given with any tickets dealing with drunken driving at any time?

A. Not that I know of, sir.

Q. Now, during the course of 1960, your year as a violations clerk, directing your attention to the amount of time which was spent on the respective jobs that you have as a patrolman and as a violations clerk, can you tell us whether during 1960 you functioned principally as a violations clerk or principally as a regular police officer and member of the Barrington police department?

A. Principally I functioned as a police officer of the Borough.

[fol. 353] Q. And did you during the course of that functioning as a police officer, continue to make arrests and so forth that you were required to do by law?

A. Yes I did.

Q. Now, as violations clerk, Officer Murray, I assume that at some point you became familiar with the uniform traffic ticket, is that correct?

A. That is correct.

Q. What comprises the uniform traffic ticket that you used in the state of New Jersey?

A. The amount of copies, is that what you wish to know?

Q. Well, what is the complete packet?

A. The complete packet would be the original, a copy for the police department, a copy for the officer, which would be a yellow copy, and a hard copy which would go to the motorist.

Q. Now, directing your attention to the yellow copy, incidentally, was the police department copy of any particular color?

A. That was a blueish green color, yes.

Q. Now, with reference to the yellow copy, what was its function?

A. That was strictly a police officer's reference to the case.

Q. Now, what was the normal procedure then an arresting officer would follow with relation to these various copies after he had apprehended someone in Barrington and given them a ticket, what would happen to these various copies?

A. Well, it varied in different cases, and a case where he had issued a summons on the road, I would say a majority of the time he obtained the yellow copy himself, he would take the original and the police copy, staple those together and put them in the violations drawer, and the yellow copy he would usually put in his cubbyhole or mailbox slot, and in matters of radar where they were a great deal of summonses issued, he would merely take all the copies excepting the hard copy which was given to the motorist and staple them together and put them in the violations drawer.

[fol. 354] Q. Now, the violations clerk then would ultimately process this ticket, is that correct?

A. So far as entering the books and so forth, yes that is correct.

Q. Now, what happened to the yellow copy in those instances which you have described in which the yellow copy was simply turned in with the other copies into the violations drawer?

A. Well, sometimes they would be marked and returned to the officer and sometimes it would be just disposed of by the violations clerk.

Q. Would this happen in cases where the matter went to court and there was a hearing?

A. No, not where the matter went to court.

Q. With reference to independent records which a police officer, and arresting officer, may or may not keep as to the tickets which he issued to whom or any other information that he wanted, was this a customary practice?

A. To keep a record of his own, it was not a customary practice.

Q. Now, if the arresting officer in an instant in which he had sent in his yellow copy, or with the police department, and the violations bureau copy, had not been contacted by the party making a change on that particular ticket, would the arresting officer know the disposition of that matter if he did not get back his yellow copy?

A. No sir, there would be no way of the officer knowing.

Q. Now, if he knew of the matter, was particularly interested in it in some way, was there a method by which he could go and find out what disposition had been made of it?

A. If the officer had a particular interest in a certain case, and remembered the name of the party involved, he could always go to the docket book and check that case, but if he had no particular interest, didn't remember the name, if he didn't get his yellow copy back, he had no way of determining what the disposition was.

[fol. 355] Q. When a ticket was ultimately processed by the violations clerk, and by ultimate processing I mean making the entries in your docket book and your cash book and so on, if there were a change on the face of that ticket, would there normally also be some indication that the arresting officer had consented or approved of the change in any way?

A. No, there would be no indication that the arresting officer had approved of any change made.

Q. Now officer, during the course of your job as a violations clerk, did you have an occasion to enter upon the record the information on the ticket which appeared to have had changes and had been marked up in some way?

A. Yes, I had entered those in the docket, the cash book and so forth, it was my obligation as violations clerk to do so.

Q. Now, when you made the entries in the docket book, if such be the case and into the cash book and so on on such a ticket, were you aware or did you believe that you were violating the law or exceeding your authority as violations clerk in doing that?

A. No sir, I was not aware that I was violating any law or exceeding my duties because I felt that this is what is done on the summonses, and I had no interest in the summons other than to enter it into the cash book.

Q. Going back to one more thing, Officer Murray, I have gone over with you the check that was apparently involved in this matter, do you have any recollection of ever seeing

the ticket or any copies of the ticket in the Wright matter at any time?

A. I have no recollection other than when I was showed these summonses and check at the Prosecutor's office.

Q. And that was in December of last year, in '62?

A. That is correct.

Q. Now, normally, according to the pattern of operation or routine that existed in the Barrington police force, was there any understanding about changing a ticket issued [fol. 356] by another police officer?

A. There was no direct understanding or direct agreement to anything. It was a procedure which had been followed probably from years back.

Q. When did you go on the force?

A. In May of 1957, sir.

Q. Do you recall by any chance whether this unspoken code or routine or whatever it was was in existence at the time you first came on the police department?

A. As far as I recall, it was in existence at the time and had been for some time prior to that.

Q. And when you came on, did you go in to seek council with anybody as to how these things were worked?

A. No sir, I just fell into the routine of things as a police officer.

Q. Now, was there any method by which the party changing the ticket of another officer by which he was forced to do this or could be checked up on in any way?

A. No, no officer was compelled to do anything.

Q. Now, Officer Murray, I read to you a portion of the indictment which is the subject of this particular matter. I would like to ask you under oath after you have given serious consideration, whether at any time you unlawfully conspired together with either Officer Holroyd or Officer Elwell to pervert and obstruct the due administration of the motor vehicle traffic laws of this state, unlawfully, knowingly, and corruptly agreeing to dispose of certain traffic cases commonly designated operating offenses, such as speeding, by altering and falsifying the summons and

complaint, made by the arresting officer or officers as the case may be, thereby changing the nature of the offense aforesaid to one commonly designated as a standing offense such as Borough parking in a prohibited area?

A. No sir, I did not enter into agreement to obstruct any justice or anything of that nature.

Q. Do you remember at any time talking with Eugene [fol. 357] Elwell or James Holroyd about what the two or three of you were going to do with any particular ticket, other than the normal procedure for the handling of traffic offenses?

A. No sir, I don't recall ever having a conference or anything of that nature with either one of the co-defendants about any summonses issued or changed.

Q. Are these two other gentlemen, do they occupy in your association or private life any closer relationship than anybody else in the police department in Barrington?

A. No sir, they do not.

Q. Officer Murray, have you ever on any occasion changed a ticket from an original charge or modified or altered it in any way to any other charge?

A. Yes I have.

Q. Now, apart from that or with that consideration, have you ever profited personally, directly or indirectly, one single dime by the changing of any ticket that you may have changed?

A. I have never accepted any money, I never accepted any money or anything of that nature or anything that I did for anyone.

Q. Did you make a statement to the Prosecutor when he was interrogating you back in December of '62?

A. Yes I did.

Q. Have you ever, and this again is apart from the information which you may have been given, at the time of Mr. Kaplan or Mr. Rigg questioning you, apart from the information which they gave you at the time, have you ever received or known of the receipt of more money in a given traffic offense than was given into the books of Barrington?

A. No, I never received more money for any traffic offense than was entered in that book, in that traffic docket.

Cross examination.

By Mr. Aiken:

Q. Mr. Murray, you said that you didn't know you were [fol. 358] perverting the administration of justice, is that right?

A. That is correct, that is what I said.

Q. Now, you knew and you know now that back in 1959 and '60, the minimum fine on a speeding charge was ten dollars and five dollars costs, didn't you?

A. Yes I did.

Q. And you knew then, and you know now that of that fine, that that minimum fine of ten dollars was to go to the county treasurer?

A. Yes I did.

Q. And you knew, did you not that if two people were both charged with the offense of speeding, that they should be treated in the same manner?

A. Basically, yes.

Q. Then you knew it was wrong to treat one in a favored way, didn't you?

A. I would have to say no to that.

Q. Well, it is not right to treat one person one way and another person another way when they are both charged with the same offense, is it?

A. Not necessarily so.

Q. No, it is not right, is it?

A. It is not necessarily right.

Q. And every time you changed a ticket that was what you were doing, wasn't it?

A. In a sense, yes.

Q. And you said that there was no direct understanding between you and the other two defendants here about changing tickets, should I take from that that there was an indirect understanding?

A. It was a mutual understanding.

Q. It was an understanding, wasn't it?

A. Yes.

Q. Sure, and when you changed a ticket from speeding to a parking violation, you knew that the money that should have gone to the country treasurer on the speeding charge was not going to go where it should go.

A. If the money was accepted.

Q. Well, you knew that if the man was guilty of speeding, that ten dollars should go to the county treasurer, right?

A. Yes sir.

[fol. 359] Q. And that where the ticket was changed, the ten dollars did not go to the county treasurer, right?

A. Not if only five dollars was accepted for parking.

Q. That's right, ten dollars should have gone to the county treasurer, shouldn't it?

A. Yes.

Q. Now, when you were questioned by Mr. Kaplan, did you tell him anything about Mr. Elwell reading off this batch of tickets, including the Wright ticket which you put in the books?

A. When I was questioned by Mr. Kaplan, I believe that Mr. Kaplan had asked me if I received any help, and I believe that I told Mr. Kaplan that at the beginning of my term as a violations clerk, I had been assisted by Mr. Elwell.

Q. Didn't you tell Mr. Kaplan that you had no explanation of the matters relating to the Wright ticket?

A. Yes I did, no explanation, and I still have no explanation.

Q. Well, you told us that Mr. Elwell read off these tickets to you, and then you entered them in the book without looking at them or without checking the money or something to that effect, didn't you?

A. Yes.

Q. But you didn't tell Mr. Kaplan that, did you?

A. No I did not tell Mr. Kaplan that.

Q. Now, you were not asked on direct examination, Mr. Murray, anything about the five dollars that you had en-

tered in the books on January the 8th, in connection with the Wright ticket, you received that five dollars, didn't you?

A. In essence, I received it.

Q. What do you mean in essence?

A. I never held the five dollars in my hand, sir.

Q. Didn't you deposit it?

A. I deposited a lot of monies and a lot of checks at the same time.

Q. You made a deposit on January the 26th I believe.

A. I don't know exactly what date it was.

Q. The first deposit in January, is that right?

A. Yes, that is right.

Q. And that deposit included the five dollars in connec-
[fol. 360] tion with the Wright ticket, didn't it?

A. Yes sir.

Q. And where did that five dollars come from, Mr. Murray?

A. I assume it came from Mr. Wright's ticket.

Q. It was attached to Mr. Wright's ticket?

A. I assume that it was.

Q. Now at any time while you were violations clerk of 1960, did any other ticket turn up five dollars short?

A. I don't follow you on the question.

Q. Well as far as you know, did any other tickets that you handled in connection with your duties as violations clerk in 1960, turn up with five dollars less than the receipt showed was paid?

A. To the best of my knowledge, no.

Q. Now, if that five dollars was attached to the Wright ticket, had come from some other ticket, there would've been a shortage in relation to the other ticket, wouldn't there?

A. No sir.

Q. Well, are you saying by that that somebody took in some money they didn't give a receipt for?

A. No sir, I am not saying that.

Q. Well that is the effect of your answer, isn't it?

A. Not that I am aware of it.

Q. Now you said that you were never instructed by anybody in connection with matters relating to the violations clerk except possibly Mr. Elwell. You had available in the police headquarters to you both as policeman and violations clerk, a copy of the rules of court relating to municipal court, didn't you?

A. I really couldn't tell you sir, I never went to any books.

Q. You don't know whether there was a copy of the rules of courts available?

A. I am not familiar with them. I couldn't truthfully say there was or there wasn't. I went to the judge for all my decisions.

Q. And you sat in court twice a month with the judge as violations clerk, didn't you?

A. Yes I did.

[fol. 361] Q. And you don't know whether there was a copy of the rules of court available?

A. That was never a copy of the rules of court at the time we sat on court.

Q. Now, how about in police headquarters?

A. I don't know sir.

The Court: Is this the first time you had been violations clerk?

The Witness: Yes.

Q. Well, you had been Deputy Violations Clerk, hadn't you?

A. Yes I had.

Q. Since you joined the force?

A. Yes sir.

The Court: When did this business of revolving as far as the violations clerk, start?

The Witness: Well, it had been, the girl who works in the tax office, she had the first and then I believe Sergeant Rehmer had it, and then Officer Elwell, myself, and then Officer Graver took on from there.

The Court: In other words, four or five years and each one had a one year term.

The Witness: Well, no, Sergeant Reamer had it for two years.

Q. Now, in connection with your testimony, Mr. Murray, about Mr. Davis, the gentleman from the administrative director's office, did you tell him anything about the fact that you changed tickets?

A. No sir, I did not tell him.

Q. Did you tell him anything about tickets being changed by anybody else?

A. No sir, I did not tell him anything about anyone else.

Q. Did you ever tell the judge that you were changing tickets?

A. I did not.

Q. Outside of the police department, Deputy Violations Clerk, did you ever tell anybody else?

A. Outside of the department, sir?

Q. Yes.

A. Not that I recall anybody specifically.

[fol. 362] Q. You didn't tell any member of the mayor and Borough Council, did you?

A. Not that I know of.

Q. And all of your entries in the cash book on the traffic docket that you made as violations clerk, as far as money is concerned, balanced out?

A. Yes.

Q. Mr. Murray, didn't you tell both Mr. Rigg and Mr. Kaplan that where a ticket was to be changed, the consent of the issuing officer had to be obtained?

A. Yes, I told the gentleman that.

Q. I think that's all.

Cross examination.

By Mr. Sherman:

Q. In your regular duties as a police officer during the years that you have acted as a police officer, did you ever have a course of any kind or instructions to the law as to

when you can or can't make an arrest for different violations of the law?

A. A course pertaining to my making the arrests?

Q. Yes.

A. Yes, I attended a school.

Q. Now, did you ever have a course however, in relations to the violations clerk?

A. No sir, there was nothing available.

Q. And was there anything included in the course which you took in respect to violations clerks?

A. No sir, not in police school.

Q. In other words, the course that you did have was a course for how long a period of time?

A. Six weeks, sir.

Q. And this course was given to officers who choose to take that course or is that mandatory?

A. It is not mandatory, either the officer wants to go or the Borough sends him.

Q. And you, as one of the officers, chose to take that course, is that correct?

A. That is correct, sir.

Q. When did you take that course?

A. Right when I first came on the police department. I was only on a week when I attended the school.

[fol. 363] Q. And outside of taking that course, did you ever receive any instructions from anyone else as to how and when you can make an arrest, and or whether you have to be present or not present at the scene, or anything of that nature?

A. I have been instructed in other, say a week, schools that I have attended.

Q. In any of those course that you took, is it my understanding that you received no instruction whatsoever in respect to the duties of the violations clerk?

A. No sir, only from my predecessor.

Q. Now, the prosecutor asked you if you were familiar with the rules of court. You did not read the rules of court, is that true?

A. No sir, I did not.

Q. Was it your understanding that whatever the violations clerk did or the clerk was under the jurisdiction of the court itself?

A. Yes sir, that was my understanding.

Q. And you received this knowledge and understanding from the court itself?

A. Yes sir, it was my opinion that the judge was my boss.

Q. And you are not familiar with the present rules that have just been made by the court in reference to violations clerks and what they can or can't do as prescribed under the rules of the court?

A. No sir, I have no knowledge of that.

Q. And you don't even know how many pages or how many rules there are in this rule book concerning what a violations clerk can do and can't do.

A. Not the slightest idea, sir.

Q. And you are not familiar with the fact that the rules which state that the court is responsible for all these matters which take place in the court, are you?

A. No sir.

Q. You are not familiar with the fact that there is such a rule, are you?

A. No sir.

Q. And you were never told that by a judge or anyone else, by the magistrate or anyone else?

A. I never what?

[fol. 364] Q. You were never told that?

A. No, I was not.

Q. And when they came from Trenton from the administrative office, did they tell you that the obligation was to the court alone and what the court says is what you should do?

A. They never told me directly anything. In fact, the only man I ever saw from the administrative director's office was Mr. Davis and his primary purpose of being there, and as I understand it, was to check on the records and so forth.

Q. And serving as a violations clerk, your duties as a violations clerk are entirely different, were they not, than your duties as a police officer?

A. Yes they were.

Q. And you are familiar with your duties as a police officer, isn't that correct?

A. I believe I am, yes.

Q. There wasn't any question ever raised against you in respect to your duties as a police officer, when they interrogated you?

A. No sir.

Q. And for the interrogation both by the Attorney General and the Prosecutor's office, it was purely in reference to the violations clerk or Deputy Violations Clerk, isn't that correct?

A. Yes sir, that was the major reference.

Q. Now, when you said it was understood by changing tickets, was it understood by each and every officer or others connected with that court that you had certain discretionary powers in these cases?

A. Myself as a violations clerk?

Q. Yes.

A. I really couldn't answer the question sir, I don't know what each officer was aware of about my powers or anything else.

Q. Well, was it your opinion that you had discretionary powers, the right to make changes when you made those changes?

A. My own power, yes.

Q. And you held that opinion from the time that you came on the force up until the time that this investigation took place?

A. That is correct.

[fol. 365] Q. Had anyone from the Prosecutor's office or from Trenton from the Administrative Office contacted your Borough since this investigation to instruct you as to what the rules are in respect to your duties as a Deputy Violations Clerk?

The Court: Sustain the objection. As far as we are concerned, it is immaterial and irrelevant because all of the rules have now been changed.

Q. Who is the violations clerk at the present time?
A. At the present time it is Alexander Davidson.
Q. And do you know when he was appointed as violations clerk?

Mr. Aiken: I object.
The Court: Sustained. Immaterial and entirely irrelevant.

Q. That is all.

Redirect examination.

By Mr. Gerry

Q. Now, Officer Murray, you were asked about common treatment for same offenses by Mr. Aiken. In your capacity as violations clerk, were you required to be in court to help the judge and so on on court nights?
A. Yes I was.
Q. And were you ever present when persons charged with the same type of offense—

Mr. Aiken: I object. It is leading and entirely irrelevant.
The Court: I will hear you on it, Mr. Gerry.
Mr. Gerry: If Your Honor please, I think the Prosecutor has raised it on cross examination that the basic fault here is to somebody receiving a different penalty for the same offense. I am simply trying to point out—I would make an offer of proof, Your Honor.
[fol. 366] The Court: Why don't we do that at side bar. The jury may remain in the box.

(The following is heard out of the presence of the jury.)

The Court: All right, gentlemen, I will hear you.
Mr. Gerry: If Your Honor please, on cross examination it is my recollection that Mr. Aiken asked the witness, Offi-

cer Murray, whether or not it was proper in his opinion or as he conceived his duties, or conceived the law restricting or defining his duties, to enter a ticket for speeding in what case for the accepted amount of ten dollars and five dollars cost, and in another case for parking where that speeding summons had been altered and the desparity of the amounts which were required of the violator constituted an unfair treatment and something that he should recognize as being unfair and improper. On direct, it was my intention to simply ask Officer Murray that in during the course of his duties as violations clerk, whether or not he was required to be in court on court nights and assist the court and whether or not in his experience depending on mitigating circumstances, different amounts of fines were produced for the same thing.

The Court: What you are doing now is you're bringing the judge into it. The question asked by the Prosecutor was this, do you or do you personally, let's forget all about judges and ones who have been sentenced because all those cases are already in court where as a practical matter, all of these should have been. This is not in front of the jury, so it makes no difference. We all know definitely none of them had any right whatsoever to change the ticket, and that is the law just as clear as the fact that I am looking at you now. Now, when we go into court we have something else. We then have a case, actually being tried, with the judge meting out punishment and only there would be [fol. 367] circumstances where there should be a change of the penalty. I have that every day of the week when I sit in criminal court on sentence day, but that is not what the Prosecutor says. What the Prosecutor is saying in effect, as I understand the question and if I am wrong, please correct me, did you personally feel that two people charged with the same offense, to wit, speeding, shouldn't get the exact same treatment. And the answer was well basically, maybe, but then I think the Prosecutor continued on one step further and said do you feel they both as far as you

personally are concerned, that you're treating one unfairly in relation to the treatment that you gave the other. Now, I don't see how bringing the judge into it, because once it gets in front of the jury, there is testimony in the case, there is mitigating circumstances that may be introduced. We said did you personally feel that that was the right thing to do. So for that reason I think that what happened in court is not connected with and I therefore overrule it and still rule that it is immaterial and irrelevant. Objection however, to the court's ruling may be entered upon the record on behalf of the defendant.

Mr. Gerry: Your Honor, it is my feeling for the purposes of the record, that what was basically involved during the course of this was the element of criminal intent, the knowledge on the part of the defendant, and that if this man who had not had any prior training, has been exposed to experiences in court, where varying fines were inflicted, or imposed, upon people under the same charge. That would be quite understanding that he might misinterpret it.

The Court: No, I think that is going too far. Let's get one question straight now. As I understand it, Prosecutor, is your question directed the same as I have said it, did you personally feel, was that your question?

Mr. Aiken: Well, I don't think it was quite that way, Your Honor.

[fol. 368] The Court: Well, what way is it then?

Mr. Aiken: Well, I asked him if he didn't know it was wrong to treat two people accused of the same offense in different manners?

The Court: Now, what the hell is the difference between that and what I said. Now we've got to get this straight.

Mr. Aiken: It's just a matter of using language, that is all.

The Court: Aren't you asking him do you personally feel, in other words, does he have a right to in effect disturb the function of the court. Now, obviously what he did was wrong, there is no doubt about that, it is not a judgment and in no way affects your case because the jury de-

cides it, not me, so don't worry, I know what the law is on it, and you definitely had no right to do what you did, and it is definitely a violation, but there the people out there that are going to decide this conspiracy. Now, under the circumstances you see, the question, he in effect is saying although he didn't put it this bluntly, but I will, did you feel that you had the right to usurp the powers of the court. And that in effect is what he is saying. You see, when you go into court regardless of what you may be charged with, testimony is presented, you could be found guilty, say for example drunken driving. How many times have we had a drunken driving charge made against somebody, they go into court and then the proof falls apart, the doctor doesn't remember or there is some doubt in his mind if he had known that fellow had been drinking, or something else, which was to soothe his nerves or something, and non-alcoholic, which affected him in the same way. Now, you may finish up with the conviction careless driving. We have that every day of the week on an entirely different charge. Well, as I understand the question of the Prosecutor, you feel in effect that you had the right to go ahead and change [fol. 369] these things on your own, and obviously I don't think that comparing it to an actual judicial procedure, I think that is going too far. It will remain the same. Objection sustained. All objections may be entered upon the record on behalf of the defendant.

(The following takes place in the presence of the jury.)

By Mr. Gerry:

Q. Officer Murray, I think that there is in evidence now the fact that you signed a receipt in the Wright matter for five dollars on January the 8th, 1960.

A. That is correct.

Q. Can you tell us how long that was after you first assumed your duties as the new violations clerk of the Borough of Barrington?

A. It would be approximately seven or eight days.

Q. Now, when Mr. Davis came down from the office of the Administrative Director of the courts in 1960, did he make any comment to you at any time about the proprieties of the tickets that he saw?

A. No, he made no comment at all.

Q. I think that you testified that you gave a statement to Mr. Kaplan in December of 1962, is that correct?

A. That is correct.

Q. I believe that Mr. Aiken has asked you whether or not you indicated to Mr. Kaplan in December of 1962 the manner or method in which you received help from Officer Elwell and did Mr. Kaplan ask you the nature of the help that you received.

A. No sir, not that I recall.

Q. Do you recall being asked on page 57, do you recall being asked by Mr. Kaplan, "And were you the only one who made up the deposit slips during the time you were violations clerk.", and giving the answer "I can't give you [fol. 370] a yes or no answer on that. At the beginning when I took over, I had help," and thereafter being asked "You had help," and answering to that question "Yes, because I wasn't familiar with the book work involved." Do you remember those questions and giving those answers?

A. Yes I do.

Q. Now, in your capacity as a violations clerk, you were making your periodic posting of the various summonses and complaints when you reached a ticket which had some alteration or change on its face, which you had nothing to do with, did you as violations clerk conceive it to be your duty to enter what the fine was that was shown on there, the final fine?

A. Yes, that was my idea of it. That was my obligation to do so.

Q. Did you conceive it your duty to police the rest of the police force in the department and any other people appearing on that summons?

A. No sir, I didn't feel it was my duty at all.

Q. That's all, thank you.

Recross examination.

By Mr. Sherman:

Q. Officer Murray, various tickets were issued in 1959. I believe the testimony was somewhere around 900 tickets, do you recall that?

A. I know there were a great deal of tickets, I don't recall that specific figure.

Q. When we speak of these tickets being issued, they were issued by all the officers in the Borough of Barrington, not just the three gentlemen here today, isn't that correct?

A. That is correct, sir.

Q. And when you were acting as violations clerk and you would give a receipt, you would issue a receipt in accordance with the manner in which the complaint or whatever the fine was, isn't that correct?

A. That is correct.

Q. And that could've been made by other people besides [fol. 371] the three that are here today, isn't that correct?

A. Very correct, sir.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. Mr. Murray, I forgot to ask you about these tickets that were marked for identification yesterday. Would you look at these and tell us how many you issued?

A. Yes sir, I issued eight of them.

Q. And those eight all show evidence of having been changed, do they not?

A. Yes, I believe that is right.

Q. Can you tell from looking at those eight whether you made the changes or whether somebody else made them?

A. Yes, I can tell, I didn't make any of those changes.

Q. Did you consent to those changes?

A. Indirectly I guess I did.

Q. The understanding was that the change had to be with the issuing officer's consent, wasn't it?

A. That was the mutual understanding, I would say.

Q. Will you look at these tickets there and tell me how many of the receipts you issued?

A. Two.

Q. Two receipts?

A. Yes.

Q. Now, on those two where you issued a receipt, if you had looked at the hard copy, the offender's copy of the summons, can you tell that a change had been made on that copy?

A. From the hard copy could I tell?

Q. Just on ones where you issued the receipt.

A. Yes sir, I could.

Q. So that when you accepted money that was paid, either the change had not yet been made or it was evident on the hard copy of the ticket, isn't that right?

A. When the money was paid?

Q. Yes.

A. When the money was paid, it was evident on the hard copy from what I—

[fol. 372] Q. Or the change had not yet been made, isn't that right?

A. It would be evident, yes.

Q. Now, you issued speeding tickets that fell within the minimum fine that were not changed, didn't you?

A. I had issued some that had not been changed, yes.

Q. Where the fine would've been the minimum of ten dollars and five dollars?

A. Yes.

Q. That's all.

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, how many summonses or tickets do you have there that the Prosecutor has handed to you?

A. How many in here all, sir, I have 14 in front of me.

Q. And of those 14 tickets which the Prosecutor has handed you, did you make changes on any of those?

A. No sir.

Q. Can you tell us of the 14 tickets in what year the monies were paid?

A. Yes, 12 were paid in 1959 and 2 were paid in 1960.

Q. It was in 1960 that you were violations clerk, is that correct?

A. Yes.

Q. Is there any evidence in relation to any one or more of those 14 tickets that any monies were received over and above that for which receipts were written out?

A. No sir, there is no evidence of that.

Q. That's all.

Recross examination.

By Mr. Sherman:

Q. Officer Murray, when you became the violations clerk, you received some information, somehow, some way that as a violations clerk, you had the authority of certain traffic offenses, is that correct?

A. That is correct.

Q. And you also knew that you had no authority over certain other traffic offenses, isn't that correct?

[fol. 373] A. That is also correct.

Q. And you knew that you had no authority over offenses such as operation of a motor vehicle while under the influence of intoxicating liquors, isn't that correct?

A. That is correct.

Q. And you knew that you had no jurisdiction over reckless driving or careless driving, isn't that right?

A. Over reckless driving, but not careless driving.

Q. And you knew that you had no authority over leaving the scene of an accident?

A. That is correct.

Q. And you had no authority to driving while under the revoked list?

A. That is also correct.

Q. And you had no authority of driving without a license?

Mr. Aiken: I'm going to object to the term of authority by Mr. Sherman.

Mr. Sherman: I am reading from the rules, Your Honor, may I read this rule. Supreme Court designated offenses schedule fines, it says that the court shall by order, this is the Supreme Court which may from time to time be amended, supplemented, repealed, designating the traffic offenses within the authority of the violations clerk, provided that such offenses shall not in no to the ones I just read.

The Court: What is the purpose of going all through this. What rules are these. Are these the amended rules or are they the original?

Mr. Sherman: This does really not amend itself, it is the same rule while he was violations clerk, and has one or two little amendments.

The Court: What are you trying to prove. He has already said that as far as he was concerned, he never looked at the rules. He never saw the rules, he never read the rules. If he never saw them or read them, how can you now confront him with the rules. What relevancy does that [fol. 374] have. Isn't that what you have in mind, my friend?

Mr. Sherman: May I show this to Your Honor?

The Court: All right, show me the relevancy as far as the rules are concerned. Now you are going to give him the first course on the rules, it is entirely irrelevant. If you want to say what is your understanding, for example that for drunken driving, you have to go, and what did you do, this that or the other thing, I will permit that, but I am not going to have a recitation of the rules of the Supreme Court in this court today because he said he never looked at them, never read them, or anything else.

By Mr. Sherman:

Q. Forgetting the rules I have just read, officer, what was your understanding as to what offenses you had authority to act and what offenses you had no authority to act?

The Court: Do you mean on changing the tickets?

Mr. Sherman: No.

The Court: Well then, you'd better get that straight.

Mr. Aiken: That is my objection, Your Honor, the authority.

The Court: All right, withdraw that and start all over.

Q. You knew that certain offenses you could collect money, is that correct?

A. Yes sir, that is correct.

Q. You knew that certain offenses, there is no court hearing required, is that correct?

A. Yes sir.

Q. You knew that the person could sign their name in the back of that summons or complaint, waiving a hearing is that correct?

A. Yes that is correct.

Q. Did you also know that there were certain offenses [fol. 375] that you could not waive a hearing?

A. Yes sir, that is correct.

Q. And what were those offenses?

A. Offenses such as drunken driving, or driving under the influence, leaving the scene of an accident, reckless driving—

Q. And in those offenses you had no jurisdiction of your own to collect any fines, unless imposed by the court, isn't that correct?

A. Yes sir, that is correct.

Q. So that any changes that were ever made, were made only on those offenses about which you felt that you had by reason of your own predecessor or other information that you had, that you had a right to do those things, which you did.

Mr. Aiken: I object to that question, Your Honor.

The Court: No, if that was his personal feeling, I will permit it.

The Witness: Yes sir, that is correct.

The Court: Now, from the standpoint of intent, that is the only purpose, and the court will charge on intent.

Mr. Sherman: That's all.

Recross examination.

By Mr. Aiken:

Q. In conection with these series of questions that Mr. Sherman just asked you, nobody ever told you or you never read anywhere, did you, that you had the authority to change a ticket?

A. No sir.

Q. And you knew that you had no discretion to make a determination as to a guilt or innocence on a valid ticket, didn't you?

A. Not necessarily, no sir.

Q. Now the rule, you know the rule, don't you, that Mr. Sherman was referring to only related to your power as a violations clerk to collect fines, didn't you?

A. The particular rule, I guess that he was referring to was correct.

[fol. 376] Q. And there was a schedule of fines prepared by the court, was there not?

A. Yes sir.

Q. And your only authority as violations clerk was in connection with the matter if a person wanted to plead guilty to a certain charge, and that was within that schedule of fines, you told him what the fine was and accepted it, is that right?

A. That is right, yes.

Q. That is all.

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, so far as determining the guilt or innocence on any matters that came under the province of the violations bureau, right on the form of the uniform standard ticket, there is a provision, isn't there, the person can come in and plead guilty and you can take the fine in certain circumstances?

A. Yes sir, on the back of the hard copy.

Q. And when you or anyone else received money over the desk from a violator, did he sign that waiver?

A. Yes sir, I would say the majority of the time that the people signed it.

Q. So in those instances, you would not be determining whether or not he was guilty or innocent, would you?

A. No sir.

Q. That's all.

Recross examination.

By Mr. Sherman:

Q. One other question, Officer, did you ever sit as a violations clerk when the judge was hearing cases and the judge would make an amendment and ask you to make a correction on the summons and complaint as the clerk?

Mr. Aiken: I object.

The Court: I will permit that.

[fol. 377] The Witness: Could we have that again, I don't understand that.

The Court: Supposing you reframe your question so that he can understand it.

Q. During those nights that the court would sit, and you would act as a clerk in the violations bureau, were there any times that the judge made a ruling on a certain case and asked you as the clerk to make the correction on the summons and complaint in view of his ruling?

The Court: What do you mean by that. Supposing I do this for an illustration. Let us assume, for example, there is a charge of reckless driving, that when the matter is presented in court, and the witness is produced, the judge comes to the conclusion that it is not or does not fall within the provision of the law of reckless driving, but he does find him guilty of careless driving. Now that sometimes happens. Now, when you say make an amendment, is that in the nature of a conclusion by the judge as to his guilt or innocence and his specific notation to enter upon the record the finding of the court of careless driving, is that correct, because I don't think there is amendments by these magistrates before the cases are heard, is there?

Mr. Sherman: What I meant, Your Honor, was citing the same set of facts as Your Honor just cited, under the reckless driving, the certain part of the statute 39:4 whatever it is, now if it was amended by the court, the statute would change.

The Court: You mean after a hearing?

Mr. Sherman: Yes.

The Court: All right, I will go for that. That amounts to the same thing. In other words, the conclusion of the court is he finds him guilty of careless driving or whatever it is.

[fol. 378] Mr. Sherman: And to change the summons and ticket in conformity with what the judge has said.

The Court: You don't change it. You put down whatever the conclusion is or the judgment of the court is. That is adding to, and not necessarily changing.

Mr. Sherman: Or striking out.

The Court: Well, I suppose you can strike out too. All right now, do you understand that. Have you ever been present when that has happened?

The Witness: Yes.

The Court: Obviously yes. All right, anything further?

Redirect examination.

By Mr. Gerry:

Q. Officer Murray, on the back of the uniform standard traffic ticket, there is listed the type of offense that you mentioned that could not be handled by the violations clerk, is that correct?

The Court: You can look at them if you want.

A. I am aware of it, Your Honor, I am aware that that is on the back of the hard copy.

Q. Have you as a violations clerk or otherwise ever disposed of any of those charges of that nature?

A. No sir.

Q. That's all.

Recross examination.

By Mr. Aiken:

Q. The judge in the municipal court in Barrington at no time ever told you that you had any authority to change a ticket, did he?

A. No sir.

Q. And you knew, didn't you, that you had no authority to make a determination as to guilt or innocence in the particular charge, didn't you?

[fol. 379] Mr. Gerry: I object.

The Court: All right, we're going a little but further. I think the answer on this thing is, and so that we get this thing straightened out, his testimony is when a ticket came in and the man had signed it and so on and so forth, the man in effect, by signing the ticket, sending in the check, paying the check over the counter, and in effect said I am guilty of this offense charged and here is the money, I don't want to come back here. Now, that he said, that he knows, he doesn't ask whether the fellow was guilty or not

guilty, he concluded that the actions on the part of the man, even though he didn't sign the ticket, he mailed it in, that it was in effect at least by action, if not anything else, and admission that he was guilty of the charge against him set forth under the summons. Now pick it up there if you want to. When we start messing around with something else, I don't think we should.

Mr. Aiken: I have no further questions.

The Court: All right, you now stand excused. You may step down.

(Witness excused.)

The Court: It is now three minutes of one, and we are all going to get excused now and go to lunch. Spectators remain seated until the jury leaves. You may leave. Please return to room 326 at two o'clock.

(Noon recess.)

The Court: Now, I believe we had finished with Mr. Murray, is that correct?

Mr. Gerry: Yes. I would now like to call Officer Holroyd.

JAMES H. HOLROYD, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Gerry:

[fol. 380] Q. Officer Holroyd, are you presently a member of the Barrington Police Department?

A. Yes I am.

Q. How long have you been with the police department in Barrington?

A. Twelve years.

Q. Where do you reside?

A. 428 Austin Avenue, Barrington, New Jersey.

Q. Do you have a family?

A. Yes I do.

Q. What is your family consist of?

A. My wife and four children.

Q. What rank do you hold in the Barrington police force?

A. Lieutenant of Police.

Q. How long have you held that position?

A. Since 1959.

Q. Have you ever at any time served as violations clerk in the violations bureau of the Barrington Municipal Court?

A. No sir.

Q. Haye you ever had the responsibility or participated in the entries of the disposition of traffic offenses in the docket book, cash book, and so on, the other books incidental to the Borough of Barrington?

A. No I did not.

Q. Were you questioned, Lieutenant Holroyd, by Mr. Kaplan of the Prosecutor's office at some earlier time?

A. Yes I was.

Q. At that time, were you given an opportunity to see a certain check that was issued by Robert Wright incidental to a traffic offense in the Borough of Barrington?

A. Yes I was.

Q. Did you observe the endorsements and so on on the reverse side of that check?

A. Yes I did.

Q. Would you recognize that as your signature on any part of it?

A. It was not my signature.

Q. Were you also at that time shown a uniform traffic ticket which had been issued to Mr. Wright?

A. Yes I was.

Q. And did you have an opportunity to observe the bottom of that ticket, the signature of the officer, the arresting officer?

A. Yes I did.

[fol. 381] Q. And who was that officer?

A. The ticket was issued by myself.

Q. And your signature, it was your signature appearing on the bottom thereof?

A. Yes it was.

Q. No question about that?

A. No sir.

Q. Did you have any knowledge of the disposition other than the testimony which may have been given in this case?

A. No I did not.

Q. Did you participate in any way in any change on the face of that ticket?

A. No, I did not.

Q. Were you in court when Mr. Wright testified in this case?

A. Yes I was.

Q. You saw Mr. Wright at that time?

A. Yes I did.

Q. Did you recognize him?

A. I did not.

Q. Have you ever seen Mr. Wright since the date under which you issued the ticket in question to him?

A. Not until the day he was in court here, Monday a week ago.

Q. Did anyone, to the best of your recollection, ever approach you concerning the disposition of the ticket which you issued to Mr. Wright?

A. No sir, not to my knowledge.

Q. Do you recall whether that particular summons or ticket was issued to Mr. Wright during the course of your duties on the road or incidental to your duties in the operation of the Barrington Radar machine?

A. The ticket was issued to Mr. Wright on Radar, while I was operating the Radar.

Q. Under the circumstances, do you know what was done with the yellow officer's copy which is a part of the official uniform traffic ticket?

A. Well, on Radar there are four copies to the uniform traffic ticket. There is a white copy, a blue copy, a yellow copy, which I believe belongs to the officer. A hard copy is given to the defendant. On Radar, it was my procedure, the procedure of the rest of the officers, that the white, blue and yellow copies would be stapled together and put [fol. 382] into the violations drawer, and there it remained until it was disposed of in the Violation Bureau or in court.

Q. In relation to that ticket given to Mr. Wright, did you ever accept any money from Mr. Wright, or anyone on his behalf, over the desk or counter, there in the Violations Bureau office?

A. No sir, I did not.

Q. Did you sign the receipt for the moneys received?

A. No sir, I did not.

Q. Prior to your testimony before Mr. Kaplan, in December of 1962, were you aware of the existence of any check which had been issued by one Robert Wright?

A. I was not.

Q. Do you recall, Officer, whether or not you ever received a yellow copy, indicating the disposition of the Wright matter?

A. Not to my knowledge.

Q. Can you tell us what the customary practice was with relation to the return of yellow copies to the arresting officer in these traffic cases?

A. Well, the customary practice was that if the person came into the Violations Bureau and paid the fine, the disposition on the back of the summons, it would be written on the back of the summons and deposited into our mail slot, or as we call it a cubby hole. And from there on, you would know what the disposition of the summons was. Now, there was a lot of times if it would go into court, the yellow copy would be pulled off the ticket and issued to you on court night.

Q. For what purpose?

A. For your recollection of what day the summons was issued, for the amount of speed that the defendant would be tried on in court.

Q. If the Wright matter was not disposed in Court, then that would presumably not be the use of the yellow ticket?

A. No sir.

Q. Now, Officer Holroyd, did you during the year 1959 or any time subsequent thereto, keep a record of tickets which you issued and you knew you issued in it?

A. No sir.

[fol. 383] Q. Did you know or had you ever heard of Robert Wright prior to the issuance of the ticket to him?

A. I didn't get your question sir. Would you repeat it?

Q. Did you know of, directly or indirectly, Mr. Wright prior to the time which you issued him a traffic ticket?

A. No sir, I did not.

Q. Had you ever heard of Mr. Wright?

A. No sir, I did not.

Q. Assuming, if you will, officer, as you testified and did know Mr. Wright or anything about him, and that no one approached you on this Wright matter, and that you had no personal interest in the disposition, apart from the disposition of any traffic ticket which you issued, and that you did not receive back a yellow copy showing the disposition of that matter, would you have had any independant knowledge of the disposition of the Wright matter?

A. I would have no recollection of the Wright matter.

Q. Can you give us an idea, approximately, how many tickets have been issued during the year 1959, in which the Wright ticket was also issued by you?

A. Counsellor, tickets I issued all—was issued in the Borough of Barrington.

Q. Tickets which you issued, approximately, if you have any idea?

A. I would assume approximately 150.

Q. Can you tell us from your experience in the Barrington Police Force, and particularly directing your atten-

tion to the year 1959, in the early part of 1960, what, if any, procedure or custom or routine was followed by an officer who desired to make some change on a ticket which had been issued by another officer?

A. The routine was that the officer who wanted to make the change on the summons would come to the police officer that issued the summons and ask him if he would give the defendant a break, and also informed the officer [fol. 384] who issued the summons the circumstances of the case.

Q. Under the circumstances which I outlined in the previous question, if this routine were not on order by someone on the police department, and the change were made anyway, would you or any other arresting officer have known about it?

A. No sir, you would have no recollection because as the summonses were issued on Radar, there was no record kept of the summonses. The three copies were stapled, put in the violations drawer, and that is where they lay until they were disposed of in the Violations Bureau or in court.

Q. Have you, on any occasion, made any changes of any sort on a traffic ticket?

A. Yes I did.

Q. Now, have you ever, either in relation to particular tickets, which we are principally concerned with Mr. Wright, or any other tickets, have you ever received any money, directly or indirectly, for any benefit or anything in lieu of money, for changing a ticket or for not objecting to changing a ticket issued by you?

A. No sir, I have never received one penny.

Q. Of the yellow copies, which you did retain customarily, would this usually be on Radar, or in instances where you issue tickets to the motorists on the road for radar. Do you understand that question?

A. No sir, I don't.

Q. Of the tickets which you issued, would customarily you have retained the yellow copy of that ticket which you

issued, more when you were on the road and issued the ticket, or more when you were working on radar, or was there no difference.

A. Well, I would approximately say nine times out of ten if it were on the road, a ticket that was issued while I was working with a car, I would retain the yellow copy unless I was in a hurry and I would put just the whole summons right into the drawer.

Q. Do you recall whether or not the volume of traffic [fol. 385] offenses passing through the Violations Bureau in the Borough of Barrington was exceptionally great or just the same or less the preceding years?

A. The year 1959, and the early part of 1960, there was a tremendous volume of tickets that had passed through the Violations Bureau.

Q. Is there any particular reason for that, which you can recall?

A. We had attained a Radar in 1959 and we ran the Radar until it was broke early in 1960.

Q. By the way, while I am thinking of it, may I ask you whether or not you worked shift work in your tour of duty?

A. Yes.

Q. Did you have any more shifts with Officer Murray or Officer Elwell, more than any other members of the Barrington Police Force?

A. Well, I would work with all of the men and I would work the six shifts that the officers would work. I would work with Officer Murray and Officer Elwell.

Q. And do you work with them more than you work with any other members of the Barrington Police Force?

A. No sir, I would say I work with all the men.

Q. Was there any departmental written regulation or order originating in the Magistrate or the Chief of Police or the Director of Public Safety, or any other public official requiring any change in summonses, be checked out with the issuing officer?

A. No there was not.

Q. Did you ever secretly or otherwise agree or conspire with either Mr. Elwell or Mr. Murray, or both of them, to do any improper act with the Wright ticket or any other ticket?

A. No sir, I did not.

Q. That is all.

Mr. Sherman: No questions.

[fol. 386] Cross examination.

By Mr. Aiken:

Q. Mr. Holroyd, in connection with these yellow copies and so called officer's copies, was it your practice to make notes on the back of that copy concerning the circumstance of the offense alleged?

A. It was not.

Q. But there is a place on the back of that copy for you to make notes, isn't there?

A. That is right.

Q. And didn't you make some kind of a record concerning the circumstances surrounding the offense in case that particular offense came into court to defend against the charge so that you could refresh your recollection about the incident?

A. Well, can I answer this in my own words. If it was a summons, I issued while in the control car, I would write officer's comments on the back of the summons. Radar, there was no need to write in any comments because the speed was already recorded there.

Q. Where was the speed recorded?

A. The speed was recorded on the face of the summons and then you would know that it was a radar summons.

Q. Other than what the face of the summons showed, was there any other notation relating to the speed of the car in a radar case made anywhere?

A. No sir, not unless the officer wanted to write on the back radar. I never wrote anything there where the comments were. I never write anything in, but if you get a

motorist going 42 miles an hour, you know it was issued on radar because if you issued it in the car it would be in round figures.

Q. Well, in a radar case, did you just go into court and testify that you picked up this man going 42 miles an hour, and whatever it was?

A. Yes. He was clocked on radar at the speed that was on the face of the summons.

Q. Didn't you have to show some evidence from the radar machine or something?

A. No sir, we had no graph.

[fol. 387] Q. So you had no way of telling whether or not a ticket issued by way of speeding ticket on radar was ever disposed of or not?

A. That is correct.

Q. You never knew when you might be called on to testify in a radar case in connection with a ticket that you had issued?

A. I didn't get your question.

Q. You never knew when you would be called upon to testify in court in connection with a radar ticket, did you?

A. No, only on a day before court, if the summons were in the Violations Drawer, it would be a notation on the board that Lt. Holroyd has four tickets and when I would go into court that night the Violations Clerk would tear the yellow copy off the back and hand it to me, and this way here, this is how you knew how many cases you had in court, what the offense was, and what it was for.

Q. You testified, I believe, in connection with changing a ticket, whoever wanted to change it had to check with the issuing officer?

A. Yes, if he followed the routine.

Q. And that the issuing officer had to give his consent?

A. If the officer knew that the ticket was written and the fellow came to him, as I informed you, if the officer that approached you followed the routine in the department, this was what he would do.

Q. Well, that is what was supposed to have been done under this arrangement, is it?

A. There was no arrangement, sir, there was a routine. It was no order, no arrangement, this was supposed to have been done.

Q. All right, it was a routine. But at any rate, since the Wright ticket was changed, there is no question about that, is there?

A. That is right.

Q. Do I take it then that you consented to the change in the Wright ticket?

A. No sir.

Q. You did not consent to it?

A. Unless I was approached on it.

[fol. 388] Q. Well, that is what I am asking you. Were you approached on it, did you consent to the change?

A. I don't think so.

Q. But if the routine was followed, you did, didn't you?

A. Not necessarily, because the name Wright doesn't mean anything to me. If Mr. Wright paid a fine of $15.00, then I knew that I was not approached on the summons because it would have been disposed of through the Violations Bureau.

Q. Do you remember telling Mr. Rigg in answer to "Question: Am I correct in my understanding that in relation to any summons originally issued by you, which may have been altered by another officer, this would not have been without clearing you first", and that you answered that question by saying: "He had to".

A. If he followed the routine.

Q. Well, you didn't add that, did you?

A. Well, Mr. Rigg went on to another question.

Q. Do you mean he didn't give you time to answer that question.

A. I am not stating that. While we were in there, and he was asking questions, he wants the answers immediately. He doesn't want to—he is doing an investigation there and he wanted the answers.

Q. But you did give him that answer?

A. Yes I did give him that answer.

Q. Now, Mr. Holroyd, you had a chance to look over these tickets that have been marked for identification, haven't you?

A. I have.

Q. And some of them have been issued by you, haven't they?

A. Yes they have.

Q. And they have all been changed, haven't they?

A. They have.

Q. Tell us how many did you issue or change?

A. Any of these summonses?

Q. Yes, out of that batch.

A. No sir, I made none of these changes.

Q. Well, my question I think was: Mr. Holroyd, how [fol. 389] many of these did you issue?

A. How many did I issue?

Q. Yes.

A. I am sorry, I must have misunderstood you. Four summonses.

Q. Now, you just said that you did not yourself make the changes on the tickets, those four tickets, is that right?

A. No sir, I did not.

Q. But if I understand the practice correctly, your consent to the change has to be obtained, is that right?

A. Yes, if the routine were followed.

Q. And it is safe to assume, isn't it, that in some or all of those cases, including the Wright ticket, your consent was obtained?

A. No sir, it is not safe to assume that. This happened in 1959, we are in the year 1963. It has been four and a half years ago.

Q. Well, at any rate, you consented to the change of some of the tickets that you issued in 1959, didn't you?

A. I consented to some, yes I did.

Q. And you knew too that the procedure was that when the change was made, the Violations Clerk would enter

the ticket as it was changed rather than as it was originally issued, didn't you?

A. I know nothing about the violations end. I was never a Violations Clerk, only a deputy.

Q. Well, do you mean to tell me that when a ticket was changed you did not know that it would go into the record as changed?

A. When the ticket was changed, that I did not know that it would go into the record as changed?

Q. Yes, that's right.

A. I assume I knew it.

Q. Sure you knew it, and that was the arrangement, wasn't it, with the Violations Clerk, that he would enter the ticket as changed with the amount of money for which the receipt had been issued?

A. Mr. Aiken, we had no arrangement, it was routine in the changing of the tickets. There was no arrangement.

Q. Well, that was the routine, wasn't it?

A. That was the routine, yes.

[fol. 390] Q. And you knew it?

A. I knew it, that is right. I am not denying that fact.

Q. Now, you also issued in 1959, tickets for speeding that were not changed, didn't you?

A. Yes I did.

Q. And if the speed was within the limits to which they could plead guilty, you know that a lot of those people came in and paid their fifteen dollars minimum fine, didn't you?

A. If I received my yellow copy back, I assuume that I did.

Q. Well, there isn't much question that you knew that.

A. That is right, I knew that.

Q. And you knew too, that of the municipal fine of the ten dollars fine and five dollars cost, ten dollars was to go to the county treasury, didn't you?

A. No sir, I did not.

Q. You never knew that?

A. No, I was never violations clerk.

Q. Well how long were you on the force?

A. 12 years.

Q. And you never learned that in a fine arriving out of a violation of speeding on a county road, that the fine went to the county treasurer?

A. I wasn't that much interested sir, in who got the fine. I wrote the summons and who got the fine and who got the costs, I did not know that this procedure was done a certain way. I did not know whether the state or the county got the fine. I don't know who got it. I was never violations clerk.

Q. Now, going back to the Wright ticket for a minute, Mr. Holroyd, you remember being questioned by Mr. Kaplan?

A. Yes I was.

Q. In connection with that ticket?

A. Yes.

Q. Do you remember that question, page 42, "Here is number 4453, September 15th, 1959, R. Wright, of Haddonfield, you made the complaint and a charge of speeding which was downgraded or changed to parking in prohibited [fol. 391] area, and a receipt issued by Officer Murray was for five dollars in satisfaction of a fine or penalty for parking, and the offender has a cancelled check which he has given us which shows fifteen dollars has been sent in, and not five dollars. And, the only reason I ask you about this, you have made the complaint and you have said in each case you knew of the downgrading and knew of the fines paid, do you have any knowledge of what happened in this case. It becomes as simple at that. We have a cancelled check for fifteen dollars for a five dollar fine. Is there anything you know about that." Do you remember that question?

A. Yes I do.

Q. Do you remember giving this answer, "No, that if the summons was changed, the officer came to me and I gave it the O. K."

A. Yes, he followed the routine.

Q. Well, you did give that answer?
A. I gave that answer, yes I gave that answer.
Q. That is all.

Mr. Gerry: I have no questions.

Cross examination.

By Mr. Sherman:

Q. Your last answer, does that imply that you had no personal knowledge of what happened when you assumed that would've happened?
A. I did not get your question, counselor.
Q. Of all of these matters of the changes made, is it our understanding that you did not know what happened after you issued the ticket?
A. No sir, I did not.
Q. You would assume that something happened to some of them, in accordance with what is the custom or procedure and had been prior to your time in the Borough Hall?
A. Yes, that is correct.
Q. That's all.

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[fol. 466]

IN THE CAMDEN COUNTY COURT

MOTION OF DEFENDANTS FOR NEW TRIAL AND ARREST OF JUDGMENT

The defendants move the court for the arrest of judgment and for the granting of a new trial for the following reasons:

1. The Court erred in denying defendants' motion for acquittal at the conclusion of the evidence for the prosecution.

2. The Court erred in denying defendants' motion for acquittal at the conclusion of evidence.

3. The verdict is contrary to the weight of the evidence.

4. The verdict is not supported by evidence sufficient to permit finding of guilt of the crime charged in the indictment.

5. Mistaken apprehension of the law by the jury.

6. Confessions of defendants were illegally admitted because said confessions were not voluntary.

7. The indictment does not state facts sufficient to constitute an offense against the State of New Jersey.

8. The proofs adduced by the State failed to establish any offense as charged in the indictment.

9. The confessions were illegally admitted in evidence because said confessions were obtained by violation of the defendants' constitutional rights guaranteed by the New Jersey Constitution and the 14th Amendment of the U.S. Constitution.

10. The said confessions were illegally admitted into evidence because the said confessions were obtained by force of a statute that violated the New Jersey Constitution and the 14th Amendment of the U.S. Constitution.

11. The Court lacked the jurisdiction by virtue of the provisions of Rules 8:10-2 and 8:8-2.

12. And for such other and further reasons as will be called to the attention of the Court at a hearing on this motion.

John F. Gerry, Attorney for Defendant.

[fol. 467]

IN THE CAMDEN COUNTY COURT

ORDER TO SHOW CAUSE—June 20, 1963

Timely motion having been made to the Court for a new trial and arrest of judgment in the above entitled cause,

It is ordered on this 20th day of June, 1963, that the State of New Jersey show cause before this Court at the Camden County Court House in the City of Camden, on the 26 day of July, 1963, at 9:30 a. m. of that day or as soon thereafter as the attorneys can be heard, why the verdict and finding of guilty entered in the cause should not be set aside and a new trial granted to the defendants, James Holroyd, Eugene D. Elwell and Donald Murray, and/or why judgment on the verdict of guilt in the cause should not be arrested.

It is further ordered that a copy of the motion together with a copy of this Order, both duly certified by the attorney for the defendants, shall be served upon the County Prosecutor of Camden County within 5 days from the date hereof.

Anthony C. Mitchell, J.C.C.

[fol. 468]

IN THE CAMDEN COUNTY COURT

ORDER OF CONTINUANCE—July 25, 1963

Motion for a new trial having been addressed to this Court by John F. Gerry, Esquire, and Joseph T. Sherman, Esquire, attorneys for defendants and said Motion being returnable on Thursday, July 25, 1963 and for good cause shown;

It is on this 25 day of July, 1963 Ordered that the return date of Motion for a New Trial in this cause be and the same is hereby continued for one week to August 1, 1963.

Anthony C. Mitchell, J. C. C.

IN THE CAMDEN COUNTY COURT

STIPULATION OF MOTION FOR NEW TRIAL

It is hereby agreed and stipulated by and between counsel for the parties:

1. The grounds for the Motion for New Trial of defendants hereto and the legal issues and arguments for and in opposition to said motion are identical to those setforth in the Motion for New Trial in the criminal prosecution of *State of New Jersey* vs. *Helen B. Naglee, Edward J. Garrity and Edward Virtue,* defendants, Superior Court of New Jersey, Camden County, Law Division, (Criminal), Indictment No. 327-62.

2. That the crime with which the defendants herein were charged is identical also with the crime with which the defendants were charged in the criminal prosecution of *State of New Jersey* vs. *Helen B. Naglee, et als,* and that [fol. 469] the facts in this and said prosecution are substantially similar, so far as they relate to the issues raised

in the Motion for New Trial, with the exception only of the dates upon which statements were taken of the respective defendants by the Deputy Attorney General and the Camden County Prosecutor's Office.

3. That the parties hereto will rely upon the briefs in support of and in opposition to the Motion for New Trial in the proceeding prosecution of *State of New Jersey* vs. *Helen B. Naglee, et als,* Super.

4. That counsel for the parties will submit the determination of the Motion for New Trial herein, upon the legal issues and arguments setforth in said briefs in said earlier prosecution without oral argument and adopt and incorporate by reference said briefs in this action and for the purpose of this motion, by reason of expediency and for the sake of brevity and by reason of the identity of trial counsel for the State and the trial Judge in this and the cited earlier prosecution.

5. That there are no facts in this and the cited earlier prosecution materially different for the purpose of the Motion of New Trial herein.

Norman Heine, Camden County Prosecutor, Attorney for Plaintiff Respondent James G. Aiken, Assistant Prosecutor.

Joseph T. Sherman, Esquire, Attorney for Defendant Eugene D. Elwell.

John F. Gerry, Esquire, Attorney for defendants James Holroyd and Donald Murray.

[fol. 470]

IN THE CAMDEN COUNTY COURT

DECISION ON MOTION FOR NEW TRIAL—Decided June 21, 1963

Appearances:

Mr. James G. Aiken, argued the cause for the State of New Jersey

(Mr. Norman Heine, Camden County Prosecutor.)

Mr. Angelo D. Malandra argued the cause for the Defendants.

MITCHELL, J. C. C.

Pursuant to orders from the Supreme Court of the State of New Jersey, the Attorney General's Office conducted an investigation of the Municipal Court system of certain municipalities in Camden County including the Borough of Bellmawr. Before the investigation of the Attorney General's Office was completed, the matter was turned over to the Office of the Camden County Prosecutor to continue the investigation.

During the course of the investigation both the Attorney General's Office and the Prosecutor's Office took statements from the defendants at bar.

The Prosecutor presented the matter to the September 1962 Grand Jury for Camden County, and a true bill charging the crime of conspiracy to pervert and obstruct the due administration of the Motor Vehicle Traffic Laws contrary to N.J.S. 2A:98-1, and 2A:98-2 was presented for prosecution.

The indictment charged the defendants, Helen B. Naglee, Edward J. Garrity, and Edward Virtue, with conspiracy "to pervert and obstruct the due administration of the motor vehicle traffic laws of the State contrary to N.J.S. [fol. 471] 2A:98-1 and 2A:98-2, by altering and falsifying traffic summonses and complaints" commonly referred to as traffic tickets, by downgrading charges of "driving while under the influence of intoxicating liquor" R.S. 39:4-50 to

a lesser offense of careless driving R.S. 39:4-97, or to a violation of the disorderly conduct provision of N.J.S. 2A:170-29. The indictment further charged that the defendants would then cause false entries to be made in the dockets of the Municipal Court of the Borough of Bellmawr and that a consideration in money was paid by the violator to the defendants, which money was not legally accounted for nor accurately reflected in the Municipal records.

These alleged violations were charged to have taken place in the Borough of Bellmawr, Camden County, New Jersey, where defendant, Helen B. Naglee, was the violations clerk; defendant, Edward J. Garrity, was the chief of police; and defendant, Edward Virtue, was a policeman in the Police Department.

These defendants were tried for the crime of conspiracy, and on May 13, 1963, a Camden County Jury returned a verdict of guilty as charged against each of the defendants.

The matter is now before the Court as a result of a motion by the defendants for a new trial and arrest of judgment. The brief of the defendants set forth the following legal arguments:

1. The indictment failed to charge a crime and the proofs at the trial did not support a conviction of the crime alleged in the indictment.

2. The confessions offered in evidence over the objections of the defendants were not voluntary confessions.

3. The admission in evidence of the confessions deprived the defendants of their constitutional rights guaranteed by the Fourteenth Amendment.

4. The Statute, N.J.S. 2A:81-17.1 is unconstitutional [fol. 472] and violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution.

5. The motions for judgment of acquittal should have been granted.

6. The verdict was contrary to the weight of the evidence.

I. The indictment failed to charge a crime and the proofs at the trial did not support a conviction of the crime alleged in the indictment.

The indictment presented by the Grand Jury charged the defendants with making false entries into the docket of the Municipal Court of the Borough of Bellmawr. N.J.S. 2A:136-1 renders any alteration or falsification of any public record, book or other proceedings of or belonging to any court in this State a misdemeanor. It follows, therefore, that the indictment sets forth a conspiracy to commit a crime.

In *State* v. *La Fera,* 35 N.J. 75, 171 A2d 311, (1961) at p. 81 our present Supreme Court stated that:

> "A charge must sufficiently identify the criminal event to enable the accused (1) to defend and (2) to defeat a subsequent prosecution for the same offense. . . . Hence, the indictment must allege all the essential facts of the crime, lest an accused be brought to trial for an offense the grand jury did not find. . . . Pleading is never an end in itself. It is merely the vehicle for the merits of a controversy. The vehicle is sufficient if it conforms with fairness, and in the case of an indictment the critical criteria are those we have just outlined. If an indictment satisfied those demands, the charge is sufficiently stated. An indictment should not be dismissed unless its insufficiency is palpable."

[fol. 473] Taking into consideration the above criteria, this Court finds that the indictment sufficiently set forth accusation against which the defendants could adequately defend themselves.

Counsel for the defense ably argues that R.R. 8:10-2 requires that any person who aids in the disposition of a traffic ticket or summons in any manner other than that authorized by the Court shall be proceeded against for criminal contempt and not by indictment for conspiracy. It is not necessary to decide whether or not this Rule of the Supreme Court of New Jersey is exclusive in remedy, since an indictment charging the crime of altering or falsifying a public record contrary to N.J.S. 2A:136-1 is a crime and was sufficiently set forth in the indictment.

Nor is it necessary to decide whether or not a traffic summons is a public record under N.J.S. 2A:136-1, since the falsification of the court docket is clearly a falsification of a public record. No evidence was introduced in trial to prove that a traffic summons in se is a public record.

The facts offered by the State were sufficient in law for a jury to determine that the defendants were guilty of the crime charged.

II. The confessions offered in evidence over the objections of the defendants were not voluntary confessions.

III. The admission in evidence of the confessions deprived the defendants of their constitutional rights guaranteed by the fourteenth amendment.

(In light of the identity of issues set forth in II and III, the Court will consider these two arguments together.)

It is well settled that the Fourteenth Amendment to the [fol. 474] United States Constitution renders coerced or involuntary confessions inadmissible in State prosecutions. Payne v. Arkansas, 356 *U.S.* 560; 78 *S.Ct.* 844; 2 *L.Ed.* 975 (1958).

The question of voluntariness of a confession is preliminarily a mixed question of law and fact to be decided by the trial judge. Voluntary confessions are admissible and involuntary confessions are inadmissible. Should the trial judge find the confessions admissible, the issue of voluntariness is then submitted to the jury for its finding on the same issue.

Historically, physical coercion was thought to be necessary to render a confession involuntary. Subsequently, abnormal periods of interrogation, lack of food and sleep, and finally psychological coercion were elements to be considered in rendering a confession involuntary. It is, of course, the obligation of the State to prove that the defendant's will had not been overborne and that the fundamental fairness requirements of the due process clause had not been violated. State v. Tassiello, 39 *N.J.* 282; 188 *A2d* 406 (1963).

In the case at bar, there is no allegation that any physical force was imposed, nor was there any evidence of unreasonably prolonged interrogation, nor was there any evidence of deprivation of sleep or food.

Counsel for the defendants urges that the confessions in the case at bar are involuntary because the witnesses were informed that if they did not give the statements they would forfeit their offices under the provisions of *N.J.S.* 2A:81-17.1. This Statute provides:

> "Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the [fol. 475] prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or

public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State."

At the taking of the original statement of Edward Virtue, the Deputy Attorney General, Budd M. Rigg, Esq., asked Mr. Virtue the following opening questions in re the voluntariness of his confession:

"Q. You are a Sergeant?

A. Detective.

Q. As you know by now, Detective, I am working under a supreme court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the municipal court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

[fol. 476] Before I do, I want to advise you anything you say must be voluntarily, of your own free will, without threats or coercion or promise or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding or proceedings in the courts of our state.

You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation.

This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department."

In a subsequent statement, taken of Mr. Virtue, Assistant Camden County Prosecutor, Sidney Kaplan, Esq., asked the following opening questions in re the voluntariness of his statement:

"Q. Now, before we begin I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you, or against any person in any subsequent proceeding in the courts of our State. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. You understand that?

A. Yes, sir.

Q. You further understand this investigation was first undertaken by the Attorney General, by Budd Rigg, and by direction of the Supreme Court it has [fol. 477] been handed to us to possibly fill in some gaps, and that is why we are here . . . "

Substantially the same opening statement was made by Mr. Rigg to Chief Edward J. Garrity when Chief Garrity gave his statement:

"Q. Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the officers.

I would just like to establish a few things here quickly now. Before I do, however, you I know are aware of the purpose of the investigation of your be-

ing here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats of promises or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our State.

You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure and this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to [fol. 478] your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right.

A. No, I will cooperate.

Q. Understanding this, are you willing to proceed at this time and answer any questions?

A. Yes."

In Chief Garrity's subsequent statement to Assistant Prosecutor Kaplan the following opening transpired:

"Q. Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you are familiar with the fact that that is something that has been suggested.

Now, I would like to go over these. Before we go on, I explained to you we are working a Supreme Court order dated last June directing originally the Attorney-General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney-General concerning irregularities in the handling of motor vehicle matters.

There are some questions we wanted to ask you and before I do I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in any subsequent proceeding in the courts of our state.

You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you.

[fol. 479] Now, shall we proceed?

A. Yes.

Q. You understand your rights?

A. Yes."

As to Mrs. Naglee, the following conversation transpired at the outset of her statement to Mr. Riggs:

"Q. Mrs. Naglee, as you know I am working under a supreme court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the municipal court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you.

Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary

and of your own free will and accord without any threats, promises or reward or any coercion.

You do have a privilege to refuse to make any disclosures or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law.

However, if you do answer a question and make a disclosure, by so doing you thereby waive this right or privilege that you have in relation to the entire investigation.

You understand that?

A. I do.

Q. And understanding that you are willing to proceed then?

A. Yes."

Assistant Prosecutor Sidney Kaplan gave Mrs. Naglee [fol. 480] the following instructions in the beginning of her statement to him:

"Q. Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses, and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June directing, originally, the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of Motor Vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you, or against any other person in any sub-

sequent actions, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Understand that?

A. Yes.

Q. And you are willing to proceed?

A. Yes."

At the end of this statement the following colloquy took place between Mr. Kaplan and Mrs. Naglee:

"Q. I want to ask you one question. Have we harassed you in any way or made it uncomfortable for you or pressed you for anything you didn't want to talk about?

A. No.

Q. And we are apprised of the fact you have a heart condition?

A. I do have.

Q. You understand that what we are doing is what [fol. 481] we are required to do by a higher authority, and that although there is nothing personal in our actions, we must be as thorough as possible to protect this office. But, I just want to be sure that we haven't done anything to harass you.

A. You have not.

Q. Thank you, you have been very helpful. That ends it as far as I am concerned."

It is to be noted that there was no statement made by either Mr. Rigg or Mr. Kaplan to Mrs. Naglee to the effect that she would lose her job if she refused to testify. It is well settled, however, that if the verdicts against Mr. Virtue and Chief Garrity are set aside, the verdict against Mrs. Naglee must also be set aside, since at least two people must be found guilty of a conspiracy for the verdict to be valid.

The narrow question before the Court at this juncture is whether or not the fact that Officer Virtue and Chief Gar-

rity were informed that they would forfeit their public office if they refused to give a statement is tantamount to such a threat so as to render their confession involuntary as a matter of law.

From the admonition of Assistant Prosecutor Kaplan at the outset of the statements taken by him of Officer Virtue and Chief Garrity cited above, it is obvious that this investigation is a continuance and integral part of the original investigation of Deputy Attorney General Rigg. Therefore, the statements to both of them by Mr. Rigg in reference to their loss of public office if they do not testify would logically be incorporated in the subsequent statement taken by Mr. Kaplan. In State v. Guild, 10 *N.J.L.* 163 (1828) the New Jersey Supreme Court states at *page* 180 that the test of whether a subsequent confession is involuntary if a prior one is involuntary is "whether it (the influence) continued to exert its force." Here there is no question that the forfeiture of office if they refused to tes- [fol. 482] tify was still in force.

The grounds for setting aside a confession on the grounds of being involuntary are continually expanding since "involuntary" confession relates to the subject of credibility and may not be used "because of the probability that the end-product of a coercive process is unreliable and unworthy of credit." State v. Smith, 32 *N.J.* 501, p. 558; 161 *A2d* 520 (1960).

Nonetheless, the issue of voluntariness is a factual question to be decided in each case. Here, each defendant was advised of his right not to testify and that any statement made by them may be used against them. The entire text of the statements revealed nothing less than full understanding and cooperation. There is no evidence that anyone's will was overborne. The defendants never once indicated at the time of giving the statements that they would not have given the statements if it were not for the fact they would have to forfeit their public office; nor has any authority been cited to the effect that the possibility of forfeiture of public office is such a threat as to render a confession involuntary.

Considering all the factors, it is the decision of this Court that the confessions made by the defendants herein are voluntary as a matter of law.

IV. The statute, *N.J.S.* 2A:81-17.1 is unconstitutional and violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution.

It is argued by counsel for the defense that *N.J.S.* 2A:81-17.1, which requires forfeiture of office for public officials who refuse to testify, is unconstitutional and hence null and void in that it violates the New Jersey Constitution and the Fourteenth Amendment of the United States Constitution by compelling a person to incriminate himself by [fol. 483] depriving him of his life, liberty, or property without due process of law.

The Fifth Amendment of the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." The Fourteenth Amendment of the Federal Constitution provides that no State shall "deprive any person of life, liberty or property, without due process of law."

Basically, the first Ten Amendments, commonly referred to as the "Bill of Rights", of the United States Constitution pertain to the Federal Courts and are applicable to State Courts and proceedings only when they are incorporated by judicial decision into the "due process" clause of the Fourteenth Amendment.

The privilege against self-incrimination guaranteed by the Fifth Amendment to Federal proceedings has not yet been construed by the United States Supreme Court to apply to State proceedings under the "due process" clause of the Fourteenth Amendment. In the United States Supreme Court decision of Adamson v. California, 332 *U.S.* 46, 67 *S. Ct.* 1672, 91 *L. Ed.* 1903 (1947), Mr. Justice Reed speaking for the majority of the Court stated:

"It is settled law that the clause of the Fifth Amendment, protecting a person against being compelled to be a witness against himself, is not made effective by

the Fourteenth Amendment as a protection against state action on the ground that freedom from testimonial compulsion is a right of national citizenship, or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of men that are listed in the Bill of Rights."

The Adamson case reaffirmed Twining v. New Jersey, 211 *U.S.* 78 (1908), which is the landmark case in deny-[fol. 484] ing the privilege of self-incrimination to defendants in State Courts as a fundamental Federal right.

This Court is well aware of the strong dissent in the Adamson case by Mr. Justice Black wherein he states:

"The Twining case was the first, as it is the only decision of this Court which has squarely held that states were free, notwithstanding the Fifth and Fourteenth Amendments, to extort evidence from one accused of crime. I agree that if Twining be reaffirmed, the result reached might appropriately follow. But I would not reaffirm the Twining decision. I think that decision and the 'natural law' theory of the Constitution upon which it relies degrade the constitutional safeguards of the Bill of Rights and simultaneously appropriate for this Court a broad power which we are not authorized by the Constitution to exercise.

I cannot consider the Bill of Rights to be an outworn 18th Century 'straight jacket' as the Twining opinion did. Its provision may be thought outdated abstractions by some. And it is true that they were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many. In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well

as new, devices and practices which might thwart those purposes. I fear to see the consequences of the Court's practice of substituting its own concepts of decency and fundamental justice for the language of the Bill of Rights as its point of departure in interpreting and [fol. 485] enforcing that Bill of Rights. If the choice must be between the selective process of the Palko decision applying some of the Bill of Rights to the States, or the Twining rule applying none of them, I would choose the Palko selective process. But rather than accept either of these choices, I would follow what I believe was the original purpose of the Fourteenth Amendment—to extend to all the people of the nation the complete protection of the Bill of Rights. To hold that this Court can determine what, if any, provisions of the Bill of Rights will be enforced, and if so to what degree, is to frustrate the great design of a written Constitution."

This Court is also aware that the Adamson case was a 5 - 4 decision, and that since 1947 notable expansion of the "due process" clause has taken place, *e.g.* the new rule that illegally seized evidence is inadmissible in a State Court. Mapp v. Ohio, 367 *U.S.* 643, 6 *L. Ed. 2d* 1081 (1961).

In spite of the above dissent and the continually broadening trend of the "due process" clause, a trial court must take the law as it finds it and cannot create new law at this level. It follows, therefore, that *N.J.S.* 2A:81-17.1 does not violate the Federal Constitution.

Counsel for the defense also argues that *N.J.S.* 2A:-81-17.1 violates the New Jersey Constitution. The New Jersey Constitution, however, does not provide for the privilege against self-incrimination. In Laba v. Newark Board of Education, 23 *N.J.* 364, 129 *A2d* 273 (1957), the New Jersey Supreme Court stated:

"Unlike substantially all other states, New Jersey's Constitution contains no expressed provision embodying the privilege against self-incrimination. . . ."

[fol. 486] In State v. DeCola, 33 *N.J.* 335, 164 *A2d* 379 (1960) Chief Justice Weintraub in addressing himself to this issue stated:

> "In New Jersey, the privilege, although not assured by organic law, nonetheless was originally protected as a matter of common law and now is by statute."

It follows necessarily that *N.J.S.* 2A:81-17.1 requiring the forfeiture of office to public officers who refuse to give statements does not violate any mandate of the New Jersey Constitution.

A statutory right against self-incrimination, however, does exist in New Jersey. *N.J.S.A.* 2A:84A-19 provides in part:

> "... every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate, except that under this rule:
>
> (c) no person has a privilege to refuse to disclose any matter which the statutes or regulations governing his office, activity, occupation, profession or calling, or governing the corporation or association of which he is an officer, agent or employee, require him to record or report or disclose except to the extent that such statutes or regulations provide that the matter to be recorded, reported or disclosed shall be privileged or confidential;"

It is obvious from section (c) of the above cited Statute that the statutory privilege against self-incrimination does not apply to the defendants herein. It is fundamental that rights established by the legislature can be limited by the legislature in their application. "Subject to the requirement of due process, there would appear to be nothing in [fol. 487] either our Federal or State Constitution which

prohibits our Legislature from curbing the scope of the privilege." Laba v. Newark Board of Education (supra).

In the Laba case at *page* 393, our Supreme Court cites *N.J.S.* 2A:81-17.1 with approval. In that same case the Court cited Pfitzinger v. United States Civil Service Commission, 96 *F. Supp.* 1 (1951) where the court suggested:

> "... that a federal employee who is called before the Civil Service Commission to account for alleged improper political activity may not assert that he is privileged to refuse to answer because of the danger of the loss of his employment; it described removal from his position as a 'remedial sanction' and noted that 'the imposition of such a remedial sanction, although it may be of serious consequence to the person affected, may not be regarded as a forfeiture of a right' but only as 'the withholding of a privilege'."

N.J.S. 81:17.1 is, therefore constitutional and not violative of any rights conferred by the United States Constitution, the New Jersey Constitution, or any New Jersey Statute.

V. The motions for judgment of acquittal should have been granted.

A motion for a judgment of acquittal at the end of the State's case is to be tested in the light of the evidence at that time and the State is entitled to all of its favorable testimony and the favorable inferences which arise from the evidence and from which the jury could find, beyond a reasonable doubt, that the defendants committed the crime. State v. Fiorelli, 36 *N.J.* 80, 174 *A2d* 900 (1961).

Upon a motion for a judgment of acquittal at the completion of the case, the question before the trial court is [fol. 488] whether the evidence, viewed in its entirety, is such that the jury could find therefrom beyond reasonable doubt that defendants have committed the crime. State v. Cooper, 10 *N.J.* 532, 92 *A2d* 786 (1953).

In the instant matter, at the end of the State's case, there was ample evidence and legal logical inferences therefrom, from which the jury could find, beyond a reasonable doubt, that the defendants committed the crime of conspiracy as charged.

Likewise, at the completion of the case, there was ample evidence before the court which, when viewed in its entirety, was such that the jury could properly find the defendants guilty beyond a reasonable doubt.

Therefore, the motions for acquittal were properly denied.

VI. The verdict was contrary to the weight of the evidence.

In order to set aside a jury verdict as being against the weight of the evidence it must clearly and convincingly appear that the verdict was the result of mistake, partiality, prejudice or passion. *R. R.* 1:5-1 (a).

The criteria for setting aside a jury verdict as being against the weight of the evidence was set down by our present Supreme Court in State v. Landeros, 20 *N.J.* 76; 118 *A2d* 524 (1955) where the Court stated at *pages* 82 and 83:

> "But the power of an appellate tribunal to reject the findings of a jury is subject to limitations. In the first instance, we may not interfere with the constitutional right of trial by jury by weighing the evidence and substituting our judgment for that of the jury, Hager v. Weber, 7 N.J. 201, 210 (1951); nor may we set aside a verdict merely because, in our opinion, we or the jury upon the same evidence might have found other- [fol. 489] wise, Boesch v. Kick, 97 N.J.L. 92, 97 (Sup. Ct. 1922); VanPelt v. Hartough, 31 N.J.L. 331, 335 (Sup. Ct. 1865); Hager v. Weber, supra; so long as 'a verdict * * * rests upon testimony competent to sustain the inference implied in such a finding (it) is

ordinarily conclusive' upon us, Haber v. Weber, supra; for 'our review upon appeal is aimed only at correcting injustice resulting from obvious failure by the jury to perform its function,' State v. Haines, 18 N.J. 550, 565 (1955), and the error of the verdict must appear to us as an 'inescapable conclusion,' Hager v. Weber, supra."

In applying the above criteria for setting aside a jury verdict, this Court finds that the record discloses sufficient evidence for the jury to return a guilty verdict, and that verdict will not be set aside as a matter of law.

For the reasons expressed in the body of this Opinion, the motion by the defendants for a new trial and arrest of judgment is denied.

[fol. 490]

IN THE CAMDEN COUNTY COURT

ORDER DENYING MOTION FOR NEW TRIAL, ETC.—
August 1, 1963

Motion for New Trial having been moved on behalf of all defendants herein by their Counsel and the Court having considered the Briefs in Support of and in Opposition to the Motion for New Trial in the case of State of New Jersey vs. Helen B. Naglee, et als and the stipulation of counsel hereto adopting those briefs and legal arguments in lieu of the filing of briefs by the respective parties on the instant motion herein and counsel having further stipulated the submission of said motion for the determination of this Court without oral argument and for good cause shown and for the reasons and grounds set forth by this Court in its opinion and ruling dated June 21, 1963 on the Motion for New Trial and Arrest of Judgment in the aforesaid case of *State of New Jersey* vs. *Helen B. Naglee, Edward J. Garrity and Edward Virtue* New Jersey Superior Court, Camden County, Law Division (Criminal), Indict. 327-62.

It is on this 1st day of August, 1963 Ordered that the Motion for a New Trial and Arrest of Judgment herein be and the same is hereby denied.

Anthony C. Mitchell, J.C.C.

[fol. 491]

IN THE CAMDEN COUNTY COURT

JUDGMENT ENTERED—September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 339-62 for the crime of Conspiracy and the defendant having on 5/27/63 Been Tried with a Jury and a verdict of Guilty as to all Defendants having been rendered on 6/7/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months County Jail, Suspended, on condition that $100.00 fine is paid, as to all Defendants.

Mr. Sherman, Esq. attorney for Eugene D. Elwell that an appeal is intended. Bail continued on all indictments.

Granted by the Court.

Mr. Gerry, Esq. attorney for Holroyd, Donald Murray, that an appeal is intended. Bail continued on all other indictments.

Granted by the Court.

Anthony C. Mitchell, Judge.

[fol. 492]

IN THE CAMDEN COUNTY COURT

NOTICE OF APPEAL

Notice is hereby given that Donald Murray, James Holroyd and Eugene D. Elwell, defendants-appellants, appeal to the Superior Court, Appellate Division, from the

whole of the final verdict and judgment of conviction entered by and in the Camden County Court, Criminal Division, in the above-entitled action and against the defendants-appellants December 16, 1963.

John F. Gerry, Attorney for Defendants-Appellants.

It is hereby certified that on December 16, 1963 a stenographic transcript was ordered for and the fee of transcription paid to the stenographic reporter pursuant to R.R. 1:2-8(3) and 8 (a).

So Certified:

John F. Gerry, Attorney for Defendants-Appellants.

[fol. 494]

IN THE SUPREME COURT OF NEW JERSEY

A-58 September Term 1964

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Defendants-Appellants.

OPINION—Decided March 15, 1965

Argued January 5, 1965 Decided March 15, 1965

Mr. John A. Yacovelle, Jr. argued the cause for the Defendants-Appellants (Mr. Samuel P. Orlando, attorney).

Mr. Norman Heine, Camden County Prosecutor, argued the cause for the Plaintiff-Respondent.

The opinion of the court was delivered.

PER CURIAM:

The defendants, James Holroyd, Eugene D. Elwell, and Donald Murray were tried before a jury in Camden County

and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws. After the trial judge denied their motion for a new trial, they appealed. We certified the matter on our own motion before argument in the Appellate Division.

The indictment charged that between January 1, 1959, and June 29, 1961, the defendants as police officers of the Borough of Barrington unlawfully agreed to dispose of certain motor vehicle traffic offense cases by downgrading the tickets originally issued by the arresting officer from operating offenses (*e.g.*, speeding) to standing offenses (*e.g.*, illegal parking), and that in furtherance of such illegal agreement parts of "fines" paid by the traffic offend-
[fol. 495] ers were unlawfully diverted. The overt acts specifically set out in the indictment concerned a speeding ticket issued by the defendant Holroyd to one Robert Wright on September 15, 1959.

At the trial Wright testified that he had been given a speeding ticket on September 15, 1959, for driving 41 miles per hour in a 25 mile per hour zone. On October 14, 1959, Wright left his copy of the ticket and a $15.00 check at the Borough Hall. On October 16, 1959, the check was deposited in the Borough account. The magistrate of the Borough's municipal court, when shown the Wright ticket, testified that it had been issued by defendant Holroyd and identified a receipt for $5.00 for a parking violation, dated January 8, 1960, as having been issued by defendant Murray. The magistrate further testified that defendant Elwell was the violations clerk in 1959 and that defendant Murray was violations clerk during 1960. The functions of the violations clerk were to keep a record showing the disposition of all tickets issued, and to accept fines and give receipts.

The official documents of the Borough were introduced in evidence. With regard to the Wright ticket, they showed: Wright had been issued a ticket for speeding on September 15, 1959, and the ticket had been visibly altered from speeding to illegal parking. An entry in the traffic docket

dated January 8, 1960, showed a plea of guilty to illegal parking by Wright and the imposition and collection of a $5.00 fine. The records did not indicate a receipt of the $15.00 Wright check, dated October 14, 1959, and the records did not account for the $10.00 difference between the $15.00 payment and the $5.00 receipt.

[fol. 496] The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Budd M. Rigg on November 2, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan on September 28, 1962.

In his statements, Elwell admitted that he altered a number of tickets he had issued because of hardship on the violator or because of friendship or at the request of fellow police officers. He also said that in addition to his duties as a patrolman, he had served as violations clerk during the year 1959. As violations clerk, after a speeding summons had been altered to parking, he would enter it in the docket book as a parking violation. He admitted endorsing the $15.00 Wright check but had no explanation for his failure to account for its receipt in the court's records. In his statements, Murray admitted altering tickets and consenting that tickets be altered because of hardship on the violators or friendship for them. In addition to his job as patrolman, he served as violations clerk for 1960. With reference to the Wright ticket, he acknowledged that as violations clerk he had received $5.00 for illegal parking and had made out a receipt accordingly. In his statements, Holroyd admitted that he had participated in the practice of altering tickets from speeding to illegal parking. He admitted that he had issued Wright's speeding ticket but could not recall whether he had been the officer who physically altered it. However, he stated that it was the practice that a ticket would not be altered without the issuing officer's consent.

[fol. 497] All the defendants testified in their own behalf, and gave testimony generally consistent with that introduced through their statements.

On this appeal the defendants contend that the trial court erred in admitting their statements into evidence without holding a hearing to determine whether the statements were voluntarily made. Before the statements were introduced into evidence, the trial judge excused the jury and held a hearing to determine their admissibility. At that hearing the defendants objected to the admissibility of the statements on the ground that they had been coerced by Mr. Rigg's warning to them that if they failed to answer, proceedings might be instituted against them to have them removed from the police department. No testimony was produced by either the State or the defendants as to the manner in which the statements were taken. The entire hearing was devoted to determining what parts of the various statements should be deleted as irrelevant to the case. Thereafter, the statements as deleted were read to the jury by the court reporter who had taken and transcribed them. At the oral argument before us the State contended that its failure to introduce evidence to show the circumstances under which the statements were taken was due to an understanding among the parties and the court that since the defendants' sole objection was on the narrow legal ground that Mr. Rigg's warning, per se, made their statements involuntary, the State was not required to go through the formality of showing that the statements were not taken under otherwise coercive circumstances. We directed that this issue be returned to the trial court for clarification. At the subsequent hearing conducted by the trial court, the [fol. 498] respective recollections of the judge, the prosecutor, and counsel who tried the defendants' case were in agreement that the State need not introduce evidence to show that the statements were not obtained as a result of physical or mental coercion; the defendants merely reserved their right to question the voluntariness of their statements on the narrow legal issue concerning Mr. Rigg's

warning. Furthermore, during the hearing before the judge in the absence of the jury and during the remaining course of the trial, defense counsel did not object to the failure of the State to offer testimony relating to the taking of the statements, nor did they offer testimony themselves on this point. We therefore conclude that in the circumstances the State was not required to come forward with evidence of the voluntariness of the statements.

The defendants also argue that the failure of the State to produce evidence before the jury on the issue of voluntariness requires reversal. However, a reading of the transcript of the hearing on remand convinces us that the prosecutor, the court, and defense counsel understood that the State need not produce any evidence before the jury as to the manner in which the statements were taken.

Defendants next contend that since neither the State nor they produced any evidence before the jury on the issue of the voluntariness of their statements, the trial court erred in instructing the jury on that issue. However, the defendants' statements, in question and answer form and including Mr. Rigg's warning, had been read to the jury. And defense counsel referred to Mr. Rigg's warning during their summations. Furthermore, no objection was [fol. 499] made by defense counsel to the trial court's charge. Under these circumstances there is no merit to defendants' contention.

Defendants next contend that, as a matter of law, their statements were involuntary because of Mr. Rigg's warning that their failure to answer his questions might result in their losing their positions with the police department. This very issue was discussed at length in our recent opinion in *State* v. *Naglee,* *N.J.* (1965). Since the circumstances in the present case are substantially similar to those in the *Naglee* case and the applicable legal principles are identical to those that governed that case, our holding there that those statements were voluntary is determinative of this issue in the present case. Indeed, the

circumstances of the giving of the defendants' statements in the present case are even more persuasive of voluntariness than in *Naglee*. For here the defendants gave their statements to Mr. Rigg in the presence of their lawyer.

The defendants complain about certain portions of their statements being read to the jury. As we have already mentioned, the statements were taken in question and answer form. The defendants' objections are focused upon certain of the questions of the interrogators which assumed the defendants' guilt in a manner in which the defendants contend was prejudicial. From our examination of these questions, and in view of the defendants' repeated admissions that they had participated in downgrading speeding tickets, we are satisfied that the possibility of prejudice to the defendants is far too remote to warrant reversal on this ground.

[fol. 500] The defendants further contend that the acts alleged in the indictment do not constitute the crime of conspiracy under *N.J.S.A.*2A:98-1(h) since they amounted to a contempt of court under *R.R.*8:10-2. As we said in *State* v. *Naglee, supra,* this court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motion for judgment of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. From the facts that we have outlined earlier in this opinion, it is clear that these contentions are without merit.

Judgment affirmed.

[fol. 501]

IN THE SUPREME COURT OF NEW JERSEY

Appeal Docket No. 4579

Criminal Action

On Appeal

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

JAMES HOLROYD, et al., Defendants-Appellants.

MANDATE ON AFFIRMANCE—March 15, 1965

This cause having been duly argued before this Court by Mr. John A. Yacovelle, Jr., counsel for the appellant and Mr. Norman Heine, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Law Division is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Law Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

Witness the Honorable JOSEPH WEINTRAUB, Chief Justice, at Trenton on the 15th day of March, 1965.

John H. Gildea, Clerk of the Supreme Court.

[File endorsement omittted]

[fol. 502]

IN THE SUPREME COURT OF NEW JERSEY

JAMES HOLROYD, EUGENE D. ELWELL and DONALD MURRAY, Appellants,

v.

STATE OF NEW JERSEY, Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 11, 1965

I

Notice is hereby given that James Holroyd, Eugene D. Elwell and Donald Murray, the appellants above named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of New Jersey affirming the judgments of conviction of said appellants, which order was entered herein on March 15, 1965.

This appeal is taken pursuant to Title 28 U. S. Code § 1257(2).

Appellants were convicted on a charge of conspiracy to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws contrary to the provisions of N.J.S. 2A:98-1 and 2A:98-2 and were sentenced to three (3) months in the county jail, which sentence was suspended on the condition that One Hundred Dollars ($100.00) fine be paid. Appellants are presently enlarged on bail and are not now in custody.

II

The clerk will please prepare a transcript of the record [fol. 503] in this cause, for transmission to the clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Joint Appendix, Volumes I and II, filed in these proceedings.

B. Decision of the Supreme Court of New Jersey entered March 15, 1965 in this cause.

C. This notice of appeal.

III

The following questions are presented by this appeal:

1. Is it repugnant to the U. S. Constitution for the highest court of New Jersey, by its own order, to undertake an investigation of an alleged law violation; to act as prosecutor of said law violation; to supply the principal witnesses for the trial; and then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

2. Does a New Jersey State Statute violate the 14th Amendment when said statute requires holders of public office to give testimony about matters relating to their office and incriminate themselves where, if the office holders refuse to testify, they thereby automatically forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

3. Does the 14th Amendment prohibit the admission in [fol. 504] evidence during a criminal trial of statements obtained under a state statute which compels a defendant police officer to make the statement or be discharged from his employment?

Samuel P. Orlando, Attorney for Appellants, 1007 Wilson Building, Camden 2, New Jersey 08102.

Proof of Service (omitted in printing).

[fol. 505] [File endorsement omitted]

[fol. 506] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 507]

SUPREME COURT OF THE UNITED STATES

No. 386, October Term, 1965

EDWARD J. GARRITY, et al., Appellants,

v.

NEW JERSEY

ORDER POSTPONING JURISDICTION—March 21, 1966

Appeal from the Supreme Court of the State of New Jersey.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is placed on the summary calendar.